

No. 11768
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

TREASURE COMPANY, a corporation, and
SAMARKAND OIL COMPANY, a corporation,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

DEC 20 1947

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

BODKIN, BRESLIN & LUDDY

1225 Citizens National Bank Building
Los Angeles 13, Calif.

For Appellee:

JAMES M. CARTER

United States Attorney

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

600 U. S. Post Office and Court House Building
Los Angeles 12, Calif. [1*]

6

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORA-
TION, a Federal Corporation, acting in behalf of
DEFENSE PLANT CORPORATION, a Federal
Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF
LOS ANGELES, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA; CITY OF LOS AN-
GELES, a municipal corporation; COUNTY OF
LOS ANGELES, a body politic and corporate;
STATE OF CALIFORNIA, a corporation sove-
reign; ASSOCIATED LAND OWNERS, INC., a
corporation; DOE ONE to DOE TWO THOU-
SAND, inclusive; ONE DOE CORPORATION; a
corporation, to FIVE HUNDRED DOE CORPO-
RATION, a corporation, inclusive; ONE A DOE
to TWO HUNDRED A DOE, inclusive, as the
Executors or Administrators, respectively, of the
Estates of One B Doe, Deceased, to Two Hundred B.
Doe, Deceased, inclusive; ONE DOE COMPANY,
a co-partnership, to FIVE HUNDRED DOE COM-
PANY, a co-partnership, inclusive; UNKNOWN
PERSONS, being all persons, firms, corporations,
public or private, having, or claiming to have, any
right, title, interest or claim in or to the hereinafter
described premises,

Defendants.

To the Honorable, the United States District Court:

Comes now the plaintiff, United States of America, on behalf, for the use, and at the request of Reconstruction Finance Corporation, by Leo V. Silverstein, United States Attorney for the Southern District of California, Irl D. Brett, Special Assistant to the Attorney General, and Frederick H. Steinmetz, Special Attorney, Lands Division, Department of Justice, as its attorneys, on application of the duly authorized officer of the United States, hereinafter referred to as the "Requesting Officer," and under the direction and by authority of the Attorney General of the United States, for cause of action against the above named defendants, and each of them, complains and alleges:

I.

That the plaintiff is entitled to acquire, by the exercise of its power of eminent domain, the property hereinafter described, for the uses and purposes hereinafter set forth.

II.

That in accordance with the provisions of the statutes hereinafter set forth, said Requesting Officer, for and in behalf of the United States, has designated and determined the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected such property for acquisition by the United States in these proceedings, and said selection, designation, and determination ever since have been and now are in full force and effect; that the purposes for which the plaintiff is taking said property as hereinafter alleged are necessary and constitute a public use, which use is authorized by law; that the acquisition thereof by plaintiff is, and

will be, of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has heretofore been appropriated to any public use, and if any part or portion thereof has heretofore been appropriated to a public use, the use to which said property is herein sought to be condemned and appropriated is a more necessary and paramount public use. [3]

III.

That plaintiff is informed and believes, and upon such information and belief alleges, that the parcels of property hereinafter described constitute the whole of various parcels, and not parts thereof.

IV.

That plaintiff has named herein by their true names, or by fictitious names, all defendants known by it to have some interest in said property; that there may be other persons having some interests therein whom the plaintiff hereby identifies as unknown persons, and makes such unknown persons defendants herein, to the end that said property may be vested in the United States of America to the extent hereinafter prayed for.

V.

That the defendants Doe One to Doe Two Thousand, inclusive, defendants One Doe Corporation to Five Hundred Doe Corporation, inclusive, defendants One Doe Company to Five Hundred Doe Company, inclusive, and defendants One A Doe to Two Hundred A Doe, inclusive, as the Executors or Administrators, respectively, of the Estates of One B Doe, Deceased, to Two Hundred B Doe,

Deceased, inclusive, are each sued or named herein under the fictitious names above set out, for the reason that plaintiff is ignorant of the true names of said defendants or decedents; that when the true names of said defendants or decedents, or any of them, are discovered, plaintiff will amend accordingly, the pleadings or proceedings herein.

That One Doe Corporation to Five Hundred Doe Corporation, inclusive, are corporations organized and existing under the laws of one of the states of the United States; that One Doe Company to Five Hundred Doe Company, are co-partnerships duly organized and existing, each one of which is composed of two or more co-partners; that One A Doe to Two Hundred A Doe, inclusive, are, respectively, the duly appointed, qualified and acting Administrators or Executors of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive.

VI.

That this action is brought by the plaintiff under the authority of [4] and in accordance with sub-paragraph (5) of Section No. 5d of the Reconstruction Finance Corporation Act (15 U. S. C. 601-617) as amended by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), and Executive Order 9217, issued by the President of the United States on August 7, 1942, which Acts and Executive Order authorize the Reconstruction Finance Corporation to acquire and dispose of property deemed necessary for military, naval or other war purposes; that the public use for which the property hereinafter described is sought to be taken is the establishment of a reservoir for the storing and conservation of natural gas.

VII.

That the "Requesting Officer" hereinbefore mentioned is Leo Neilson, Assistant Secretary of the Reconstruction Finance Corporation, an agency of the United States. That by letter to the Attorney General of the United States, dated September 19, 1942, said Requesting Officer requested the institution of this proceeding, for the purposes hereinabove and hereafter designated, on behalf of the Defense Plant Corporation, a Federal corporation, which is wholly owned and controlled by the above mentioned Reconstruction Finance Corporation.

[Written in margin]: Amended by Order ?-4-43 JAC

VIII.

That the defendants City of Los Angeles, a municipal corporation, County of Los Angeles, a body politic and corporate, State of California, a corporation sovereign, Doe One to Doe Two Thousand, inclusive, One Doe Corporation, a corporation, to Five Hundred Doe Corporation, a corporation, inclusive, One A Doe to Two Hundred A Doe, inclusive, as the Executors or Administrators, respectively, of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive, One Doe Company, a co-partnership, to Five Hundred Doe Company, a co-partnership, inclusive, and Unknown Persons, each claims some right, title, interest, or lien to, in, or upon the property hereinafter described, or some part thereof, the exact nature of which such claim or claims is unknown to plaintiff.

IX.

That the estate or interest in the property hereinafter described which plaintiff, by this action, intends and seeks

to take, acquire, condemn, [5] hold and own is the full fee simple title, subject, however, to existing easements for public utilities.

X.

That the property hereinabove mentioned, which is to be taken and condemned in this action, consists of those certain lots, pieces or parcels of land situated in the County of Los Angeles, State of California, described as follows, to wit:

PARCEL ONE

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36.

PARCEL TWO

That part of Tract No. 9578, as shown on map recorded in Book 173 of Maps, at pages 32 and 33, in the office of the County Recorder of Los Angeles County covering:

Lots, 1, 14, 15 and 16 in Block 1, Lots 1 to 4, inclusive, and Lots 25 and 26 in Block 4; Lot 1 in Block 5; Lots 1 to 8, [6] inclusive, and Lots 10 to 16, inclusive, in Block 6; Lots 1 to 16, inclusive, in Block 7; and all of Block 8.

PARCEL THREE

That part of Tract No. 9167, as shown on map recorded in Book 172 of Maps, at pages 46 to 49, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 1 to 20, inclusive, and Lots 34 to 55, inclusive, in Block 9; Lots 1 to 8, inclusive, in Block 10; and all of Block 13.

PARCEL FOUR

That part of the resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 76, in the office of the County Recorder of Los Angeles County, covering the Northwesterly one-half ($\frac{1}{2}$) of Block 67 and that part of said resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 79, in the office of the County Recorder of Los Angeles County, covering all of Block 78.

PARCEL FIVE

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center line of Playa Street, as vacated, South $61^{\circ} 20'$ West, 1890 feet, thence North $28^{\circ} 40'$ West 280 feet; thence North $61^{\circ} 20'$ East 2290 feet, thence South $28^{\circ} 40'$ East 280 feet, more or less, to the center line of Jefferson Street, (formerly Playa Street), thence South $61^{\circ} 20'$ West [7] along the center line of Jefferson Street 400 feet to the point of beginning.

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 14.1 acres, more or less.

PARCEL SIX

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center line of Playa Street, as vacated, South $61^{\circ} 20'$ West 1890 feet; thence South $28^{\circ} 40'$ East 388 feet; thence North $61^{\circ} 20'$ East 990 feet; thence South $28^{\circ} 40'$ East 635 feet; thence South $61^{\circ} 20'$ West 335 feet; thence South $28^{\circ} 40'$ East 475 feet, more or less, to the south line of the Rancho La Ballona; thence

along said Ranch line North 82° East 90 feet, more or less, to a point established as Station 19 of the Rancho La Ballona by proceedings had in Case No. 20065 of the Superior Court; thence North 52° East 990 feet to Station 18; thence North $82^{\circ} 30'$ East 462 feet to Station 17; thence North $60^{\circ} 45'$ East 1386 feet to Station 16; thence North $27^{\circ} 45'$ East 160 feet; thence North $28^{\circ} 40'$ West 1080 feet; thence South $61^{\circ} 20'$ West 235 feet; thence North $28^{\circ} 40'$ West 155 feet; thence South $61^{\circ} 20'$ West 430 feet; thence North $28^{\circ} 40'$ West 180 feet, more or less, to the center of Jefferson Street, (formerly Playa Street); thence South $61^{\circ} 20'$ West along the center line of Jefferson Street 1105 feet, more or less, to the point of beginning. [8]

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 97.38 acres, more or less.

PARCEL SEVEN

That portion of the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, extending North $33^{\circ} 52' 30''$ East 452 feet and extending South $33^{\circ} 52' 30''$ West 1008 feet from the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of said 60 foot strip of land described in said deed to Los Angeles Pacific Company; said distances measured along the center line

of said 60 foot strip; the southwesterly boundary of said 60 foot strip being a line bearing North 28° 40' West and the Northeasterly boundary thereof being a line bearing South 28° 40' East; containing 2.02 acres, more or less.

XI.

That the urgency for obtaining immediate possession and exclusive use and control of the property herein sought to be taken is such that plaintiff has not been able to procure accurate information as to the various ownerships of the above described parcels of land; and for such reason plaintiff is not able to allege the names of the owners and claimants separately claiming interests in such separate parcels; that the defendants named in the caption of this complaint by true names are apparent and presumptive owners of some part or portion of the property herein sought to be acquired, and that the defendants herein sued under fictitious names claim some right, title or interest in or to said property, or some part thereof; that plaintiff intends to and will prepare and file an amended complaint, setting forth said separate ownerships [9] and true names where ascertained, and prays leave of court to prepare, serve and file such amended complaint when the necessary information has been obtained by it.

XII.

That the defendant State of California is a corporation sovereign; that the defendant County of Los Angeles is a body politic, organized and existing under and by virtue of the laws of the State of California; that the defendant City of Los Angeles is a municipal corporation, organized and existing under and by virtue of the laws of the State of California.

XIII.

That under the provisions of the Second War Powers Act of 1942, approved March 27, 1942 (Public Law 507, 77th Congress), it is provided, in part, as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used and improved for the purposes of the Act notwithstanding any other law;”

that by reason thereof the United States is entitled to immediate possession and use of the property herein sought to be condemned;

That the Assistant Secretary of the Reconstruction Finance Corporation, in a letter dated September 19, 1942, mentioned in Paragraph VII of this complaint, stated, in part, that it is vital to the successful prosecution of the war that the United States be granted the immediate right of possession of the hereinabove described property, and requested the securing by the United States of such right of immediate possession.

Wherefore, plaintiff prays judgment:

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned, and of each and every separate estate or interest therein;

2. Adjudging that the public uses for which plaintiff takes and condemns said lands are necessary public uses of the plaintiff, and that the uses to which said property are to be applied are uses authorized by law, and that all of the said lands so taken are necessary thereto; [10]

3. Vesting in the United States of America full fee simple title to the lands hereinbefore described, subject, however, to existing easements for public utilities, and

adjudging that said lands shall be deemed to be condemned and taken for the use of the United States for the purposes and uses hereinbefore set forth; and further adjudging that the right to just compensation for the lands hereinbefore described be vested in the persons entitled thereto as their respective interests may appear and be established by judgment herein;

4. That an Order issue from this Court vesting the right to immediate possession in the plaintiff of the lands hereinbefore described and sought to be condemned in this action, and directing all parties in possession thereof to forthwith yield up possession of the same to the plaintiff;

5. That all liens or encumbrances of record against the property herein sought to be taken and condemned be satisfied out of the award to be made in this proceeding;

6. For such other and further relief as the Court deems meet and proper in the premises and as the nature of the case may require.

Dated: This 28 day of September, 1942.

LEO V. SILVERSTEIN

United States Attorney

IRL D. BRETT

Special Assistant to the
Attorney General

FREDERICK H. STEINMETZ

Special Attorneys, Lands Division,
Department of Justice

By _c Frederick H. Steinmetz
Attorneys for Plaintiff

[Stamped]: Complaint Amended: 1st date: Jan. 12, 1944.

[Endorsed]: Filed Sep. 28, 1942. [11]

[Title of District Court and Cause]

ORDER FOR IMMEDIATE POSSESSION

Upon a reading of the complaint in the above entitled action, and upon application of Frederick H. Steinmetz, Special Attorney, Lands Division, Department of Justice, for an order granting immediate possession of the property described in said complaint, pursuant to the Second War Powers Act of 1942, approved March 27, 1942 (Public Law 507—77th Congress); and upon the testimony in open Court of George H. Pannell, Appraiser for Defense Plant Corporation, and Paul M. Lee, Examiner for Reconstruction Finance Corporation, and good cause appearing therefor:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff, United States of America, is hereby granted the immediate possession of all of the hereinafter described property, excepting only those respective portions of the following lots occupied by the following persons or agencies: [12]

- a. Residence of Mrs. Coppinger, at 8116 Delganey Avenue, Los Angeles, on Lot 16, Block 33, of Tract No. 9809, hereinafter described;
- b. Pumping Plant and Reservoir of Palisades Del Rey Water Company, a corporation, on Lot 7, Block 15, of said Tract 9809;
- c. Transformer Station of Bureau of Power and Light of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15, in said Tract 9809.

The property affected by this Order is more particularly described as follows: [13]

Those certain lots, pieces or parcels of land situated in the County of Los Angeles, State of California, described as follows, to-wit:

PARCEL ONE

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36.

PARCEL TWO

That part of Tract No. 9578, as shown on map recorded in Book 173 of Maps, at pages 32 and 33, in the office of the County Recorder of Los Angeles County covering:

Lots 1, 14, 15 and 16 in Block 1, Lots 1 to 4, inclusive, and Lots 25 and 26 in Block 4; Lot 1 in

Block 5; Lots 1 to 8, inclusive, and Lots 10 to 16, inclusive, in Block 6; Lots 1 to 16, inclusive, in Block 7; and all of Block 8. [14]

PARCEL THREE

That part of Tract No. 9167, as shown on map recorded in Book 172 of Maps, at pages 46 to 49, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 1 to 20, inclusive, and Lots 34 to 55, inclusive, in Block 9; Lots 1 to 8, inclusive, in Block 10; and all of Block 13.

PARCEL FOUR

That part of the resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 76, in the office of the County Recorder of Los Angeles County, covering the Northwesterly one-half ($\frac{1}{2}$) of Block 67 and that part of said resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 79, in the office of the County Recorder of Los Angeles County, covering all of Block 78.

PARCEL FIVE

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center

line of Playa Street, as vacated, South $61^{\circ} 20'$ West, 1890 feet, thence North $28^{\circ} 40'$ West 280 feet; thence North $61^{\circ} 20'$ East 2290 feet, thence South $28^{\circ} 40'$ East 280 feet, more or less, to the center line of Jefferson Street, (formerly Playa Street); thence South $61^{\circ} 20'$ West along the center line of Jefferson Street 400 feet to the point of beginning.

Excepting Therefrom that portion included in the 60 [15] foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 14.1 acres, more or less.

PARCEL SIX

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center line of Playa Street, as vacated, South $61^{\circ} 20'$ West 1890 feet; thence South $28^{\circ} 40'$ East 388 feet; thence North $61^{\circ} 20'$ East 990 feet; thence South $28^{\circ} 40'$ East 635 feet; thence South $61^{\circ} 20'$ West 335 feet; thence South $28^{\circ} 40'$ East 475 feet; more or less, to the south line of the Rancho La Ballona; thence along said Ranch line North 82° East 90 feet, more or less, to a point established as Station 19 of the Rancho La Ballona by proceedings had in Case No. 20065 of the Superior Court; thence North 52° East 990 feet to Station 18; thence North $82^{\circ} 30'$ East 462 feet to Station 17; thence North

60° 45' East 1386 feet to Station 16; thence North 27° 45' East 160 feet; thence North 28° 40' West 1080 feet; thence South 61° 20' West 235 feet; thence North 28° 40' West 155 feet; thence South 61° 20' West 430 feet; thence North 28° 40' West 180 feet, more or less, to the center of Jefferson Street, (formerly Playa Street); thence South 61° 20' West along the center line of Jefferson Street 1105 feet, more or less, to the point of beginning.

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 97.38 acres, more or less. [16]

PARCEL SEVEN

That portion of the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, extending North 33° 52' 30" East 452 feet and extending South 33° 52' 30" West 1008 feet from the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of said 60 foot strip of land described in said deed to Los Angeles Pacific Company; said distances measured along the center line of said 60 foot strip; the southwesterly boundary of said 60 foot strip being a line bearing North 28° 40' West and the Northeasterly boundary thereof being a line bearing South 28° 40' East; containing 2.02 acres, more or less.

It Is Further Ordered that copies of this Order shall be delivered to each of the persons or agencies hereinabove specifically mentioned, and that the United States Marshal shall forthwith post in a conspicuous place upon each of the oil derricks and tanks within the above described area, a notice, substantially as follows:

“NOTICE

To All It May Concern:

Under the Second War Purposes Act, this property is taken by the United States of America for war purposes.

You enter upon this property at your own hazard.

UNITED STATES OF AMERICA
BY DEFENSE PLANT CORPORATION”

Dated this 28th day of September, 1942, at 11:44 o'clock A. M.

C. E. BEAUMONT

United States District Judge [17]

Presented by:

LEO V. SILVERSTEIN

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

FREDERICK H. STEINMETZ

Special Attorney, Lands Division,
Department of Justice

By Frederick H. Steinmetz

Attorneys for Plaintiff

[Endorsed]: Filed Sep. 28, 1942. [18]

[Title of District Court and Cause]

DECLARATION OF TAKING NO. 1

To the Honorable, The United States District Court:

For and on behalf of Reconstruction Finance Corporation, a corporation duly created by the United States of America, pursuant to 47 Stat., Chapter 8, Pages 5-12, approved January 22, 1932 (15 U. S. C. 601-617), as amended, it is hereby declared that:

1. The lands hereinafter described are hereby taken in the name of United States of America, your petitioner, for the purposes hereinafter stated, under and in accordance with sub-paragraph (5) of Section 5d of the Reconstruction Finance Corporation Act (15 U. S. C. 601-617) as amended by the Act of Congress, approved March 27, 1942 (Public Law 506, Seventy-seventh Congress, 15 U. S. C. 606 b) which amendatory act authorized the acquisition of land in the name of United States of America, petitioner herein, upon application of Reconstruction Finance Corporation, pursuant to the provisions of the Act approved August 1, 1888 (25 Stat. 357) as amended, and Sections 1, 2 and 4 of the Act approved February 26, 1931 (46 Stat. 1421) as amended. [19]

2. It has been determined to be necessary and advantageous to the carrying out of the authority vested by Reconstruction Finance Corporation in Defense Plant Corporation, a corporation created pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended (47 Stat., Chapter 8, Pages 5-12) to acquire the lands hereinafter described, in order to provide facilities for the storage of natural gas; and

3. A general description of the lands being taken is set forth in Exhibit "A", attached hereto and made a part

hereof, and is a description of a portion of the lands described in the petition filed in the above entitled cause.

4. A plat showing the lands taken is attached hereto and made a part hereof, and is designated Exhibit "B".

5. The estate taken for said public uses is the absolute fee simple title thereto, subject, however, to existing easements for public utilities.

6. The sum estimated by Reconstruction Finance Corporation as just compensation for said lands with all buildings and improvements thereon and all appurtenances thereto, and including all interests hereby taken in said lands is fully set forth in Exhibit "A", attached hereto and made a part hereof, which sum has been duly authorized to be deposited, and the said sum herewith is deposited in the Registry of this Honorable Court, for the use and benefit of the persons entitled thereto.

In Witness Whereof, the petitioner has caused this declaration to be signed in its name by Reconstruction Finance Corporation, which has duly secured the executing of this declaration by its Assistant Treasurer, and its Assistant corporate seal to be affixed, and be duly attested by its Secretary pursuant to authorization by the Board of Directors, this 22nd day of October, 1942, in the City of Washington, District of Columbia.

(Seal) RECONSTRUCTION FINANCE
CORPORATION

By H. L. Sullivan
Assistant Treasurer

Attest:

By [Illegible]
Assistant Secretary [20]

EXHIBIT "A"

The lands which shall be the subject matter of this Declaration of Taking are situated in the City of Los Angeles, State of California, and are more fully described as follows:

PARCEL ONE:

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15; Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36.

Excepting Therefrom (1) pumping plant and reservoir of Palisades Del Rey Water Company, a cor-

15 OK FML

poration, on Lot 7, Block 16 of said Tract 9809; (2) transformer station of Bureau of Power and Light

of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15 in said Tract 9809.

PARCEL TWO:

That part of Tract No. 9578, as shown on map recorded in Book 173 of Maps, at pages 32 and 33, in the office of the County Recorder of Los Angeles County covering:

Lots 1, 14, 15 and 16 in Block 1, Lots 1 to 4, inclusive, and Lots 25 and 26 in Block 4; Lot 1 in Block 5; Lots 1 to 8, inclusive, and Lots 10 to 16, inclusive, in Block 6; Lots 1 to 16, inclusive, in Block 7; and all of Block 8.

PARCEL THREE:

That part of Tract No. 9167, as shown on map recorded in Book 172 of Maps, at pages 46 to 49, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 1 to 20, inclusive, and Lots 34 to 55, inclusive, in Block 9; Lots 1 to 8, inclusive, in Block 10; and all of Block 13.

Excepting Therefrom the north outfall sewer ventilating station No. 2 of the City of Los Angeles, located on Lot 13 of said Tract 9167.

PARCEL FOUR:

That part of the resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 76, in the office of the County Recorder of Los Angeles County, covering the Northwesterly one-

half ($\frac{1}{2}$) of Block 67 and that part of said re-subdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 79, in the office of the County Recorder of Los Angeles County, covering all of Block 78. [21]

PARCEL FIVE:

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center line of Playa Street, as vacated, South $61^{\circ} 20'$ West, 1890 feet, thence North $28^{\circ} 40'$ West 280 feet; thence North $61^{\circ} 20'$ East 2290 feet, thence South $28^{\circ} 40'$ East 280 feet, more or less, to the center line of Jefferson Street, (formerly Playa Street); thence South $61^{\circ} 20'$ West along the center line of Jefferson Street 400 feet to the point of beginning.

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 14.1 acres, more or less.

PARCEL SIX:

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to

Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center line of Playa Street, as vacated, South $61^{\circ} 20'$ West 1890 feet; thence South $28^{\circ} 40'$ East 388 feet; thence North $61^{\circ} 20'$ East 990 feet; thence South $28^{\circ} 40'$ East 635 feet; thence South $61^{\circ} 20'$ West 335 feet; thence South $28^{\circ} 40'$ East 475 feet; more or less, to the south line of the Rancho La Ballona; thence along said Ranch line North 82° East 90 feet, more or less, to a point established as Station 19 of the Rancho La Ballona by proceedings had in Case No. 20065 of the Superior Court; thence North 52° East 990 feet to Station 18; thence North $82^{\circ} 30'$ East 462 feet to Station 17; thence North $60^{\circ} 45'$ East 1386 feet to Station 16; thence North $27^{\circ} 45'$ East 160 feet; thence North $28^{\circ} 40'$ West 1080 feet; thence South $61^{\circ} 20'$ West 235 feet; thence North $28^{\circ} 40'$ West 155 feet; thence South $61^{\circ} 20'$ West 430 feet; thence North $28^{\circ} 40'$ West 180 feet, more or less, to the center of Jefferson Street, (formerly Playa Street); thence South $61^{\circ} 20'$ West along the center line of Jefferson Street 1105 feet, more or less, to the point of beginning.

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 97.38 acres, more or less.

PARCEL SEVEN:

That portion of the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, extending North $33^{\circ} 52' 30''$ East 452 feet and extending South $33^{\circ} 52' 30''$ West 1008 feet from the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of said 60 foot strip of land described in said deed to Los Angeles Pacific Company; said distances measured along the center line of said 60 foot strip; the southwesterly boundary of said 60 foot strip being a line bearing North $28^{\circ} 40'$ West and the Northeasterly boundary thereof being a line bearing South $28^{\circ} 40'$ East; containing 2.02 acres, more or less.

ESTIMATED JUST COMPENSATION:

Seven hundred forty thousand, four hundred sixty-nine dollars (\$740,469.00). [22]

[EXHIBIT B]

(Photostat)

[Endorsed]: Filed Oct. 26, 1942. [23]

UNION

TRACT

2409

27 26

34 35

T2S R15W

AREA OF
PLAYA DEL REY
GAS STORAGE RESERVOIR

EXHIBIT No. 1



In the District Court of the United States in and for the
Southern District of California

Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORA-
TION, a Federal Corporation, acting in behalf of
DEFENSE PLANT CORPORATION, a Federal
Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF
LOS ANGELES, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA; et al.,

Defendants.

DECREE ON DECLARATION OF TAKING NO. 1

Comes now the plaintiff, United States of America, by
Leo V. Silverstein, United States Attorney, Irl D. Brett,
Special Assistant to the Attorney General, and Frederick
H. Steinmetz, Special Attorney, Lands Division, Depart-
ment of Justice, and moves the Court to enter a Decree
vesting title in the United States of America in and to the
real property hereinafter described, and described in
Declaration of Taking No. 1 filed herein, being a portion
of the lands described in the Complaint in Condemnation
heretofore filed, together with all improvements thereon.

Thereupon the Court proceeds to hear and pass upon
said Motion, Complaint,^c and Declaration of Taking No.
1, and finds and decrees as follows:

First: That the United States is entitled to acquire
property by eminent domain for use in the establishment

of a reservoir for the storing and conservation of natural gas. [24]

Second: That a Complaint in Condemnation was filed at the request of the Assistant Secretary of the Reconstruction Finance Corporation, an agency of the United States, the authority empowered by law to acquire the lands described in said Complaint, and also under the direction of the Attorney General of the United States.

Third: That in said Complaint and Declaration of Taking No. 1, a statement of authority under which and the public use for which said lands are taken is set out.

Fourth: That a proper description of the lands sought to be taken, sufficient for the identification thereof, is set out in said Declaration of Taking No. 1.

Fifth: A statement of the estate or interest in said lands taken for said public use is set out in said Declaration of Taking No. 1.

Sixth: A plan showing the lands taken is annexed to and incorporated in said Declaration of Taking No. 1, and marked "Exhibit No. 1."

Seventh: A statement of the sum of money estimated by said acquiring authority to be just compensation for the lands taken, to wit: The sum of Seven Hundred Forty Thousand, Four Hundred Sixty-nine Dollars (\$740,469.-00), is set out in said Declaration of Taking No. 1, and that said sum was deposited in the Registry of this Court coincident with the filing of said Declaration of Taking No. 1.

And the Court having fully considered said Condemnation Complaint and said Declaration of Taking No. 1, and the statutes in such case made and provided, is of the

opinion that the United States is entitled to take said property and have the title thereto vested in it, pursuant to the Act of Congress approved February 26, 1931 (46 Stat. 1421; Title 40, sec. 258a, U. S. C. A.).

It Is Therefore Ordered, Adjudged and Decreed:

The the title to the following described lands, including all buildings and improvements thereon, if any, and all appurtenances thereto, in fee simple absolute, subject only to existing easements for public utilities, be, and the same is hereby, vested in the United States of America, and said lands, [25] improvements, and appurtenances are deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto when said compensation shall be ascertained and awarded in this proceeding and established by judgment thereunder, pursuant to law.

The lands so condemned and taken are a portion of the lands described in the Complaint heretofore filed herein, and are situate, lying, and being in the City of Los Angeles, State of California, and are more fully described as follows:

PARCEL ONE

That part of Tract No. 9809 as shown on map recorded in Book 145 of Maps, at pages 91 to 96, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 7 to 14, inclusive, in Block 7; Lots 3 to 25, inclusive, in Block 8; all of Block 9; Lots 1 to 20, inclusive, in Block 10; all of Block 11; all of Block 12; all of Block 13; all of Block 14; all of Block 15;

Lots 1 to 13, inclusive, and Lots 25 and 26 in Block 16; Lots 1 to 13, inclusive, and Lots 23 to 26, inclusive, in Block 17; Lots 12 to 21, inclusive, in Block 18; all of Block 19; all of Block 20; all of Block 21; all of Block 22; all of Block 23; all of Block 24; all of Block 25; all of Block 26; Lots 13 to 27, inclusive, in Block 27; all of Block 28; all of Block 29; all of Block 30; Lots 4 to 9, inclusive, in Block 31; all of Block 32; Lots 3 to 41, inclusive, in Block 33; Lots 17 to 51, inclusive, in Block 34; Lots 12 to 18, inclusive, in Block 35; Lots 40 to 53, inclusive, and Lot 114 in Block 36.

Excepting Therefrom (1) pumping plant and reservoir of Palisades Del Rey Water Company, a corporation, on Lot 7, Block 15 of said Tract 9809; (2) transformer station of Bureau of Power and Light of the City of Los Angeles, located on Lots 1-6, inclusive, of Block 15 in said Tract 9809. [26]

PARCEL TWO

That part of Tract No. 9578, as shown on map recorded in Book 173 of Maps, at pages 32 and 33, in the office of the County Recorder of Los Angeles County covering:

Lots 1, 14, 15 and 16 in Block 1, Lots 1 to 4, inclusive, and Lots 25 and 26 in Block 4; Lot 1 in Block 5; Lots 1 to 8, inclusive, and Lots 10 to 16, inclusive, in Block 6; Lots 1 to 16, inclusive, in Block 7; and all of Block 8.

PARCEL THREE

That part of Tract No. 9167, as shown on map recorded in Book 172 of Maps, at pages 46 to 49, inclusive, in the office of the County Recorder of Los Angeles County covering:

Lots 1 to 20, inclusive, and Lots 34 to 55, inclusive, in Block 9; Lots 1 to 8, inclusive, in Block 10; and all of Block 13.

Excepting Therefrom the north outfall sewer ventilating station No. 2 of the City of Los Angeles, located on Lot 13 of said Tract 9167.

PARCEL FOUR

That part of the resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 76, in the office of the County Recorder of Los Angeles County, covering the Northwesterly one-half ($\frac{1}{2}$) of Block 67 and that part of said resubdivision of part of Port Ballona and part of Wicks Addition, as shown on map recorded in Book 43 of Miscellaneous Records, at page 79, in the office of the County Recorder of Los Angeles County, covering all of Block 78.

PARCEL FIVE

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to [27] Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center

line of Playa Street, as vacated, South $61^{\circ} 20'$ West, 1890 feet, thence North $28^{\circ} 40'$ West 280 feet; thence North $61^{\circ} 20'$ East 2290 feet, thence South $28^{\circ} 40'$ East 280 feet, more or less, to the center line of Jefferson Street, (formerly Playa Street); thence South $61^{\circ} 20'$ West along the center line of Jefferson Street 400 feet to the point of beginning.

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 14.1 acres, more or less.

PARCEL SIX

Beginning at the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of the 60 foot strip of land described in deed to Los Angeles Pacific Company, recorded in Book 3805, at page 107 of Deeds; thence along the center line of Playa Street, as vacated, South $61^{\circ} 20'$ West 1890 feet; thence South $28^{\circ} 40'$ East 388 feet; thence North $61^{\circ} 20'$ East 990 feet; thence South $28^{\circ} 40'$ East 635 feet; thence South $61^{\circ} 20'$ West 335 feet; thence South $28^{\circ} 40'$ East 475 feet; more or less, to the south line of the Rancho La Ballona; thence along said Ranch line North 82° East 90 feet, more or less, to a point established as Station 19 of the Rancho La Ballona by proceedings had in Case No. 20065 of the Superior Court; thence North 52° East 990 feet to Station 18; thence North $82^{\circ} 30'$ East 462 feet to Station 17; thence North

60° 45' East 1386 feet to Station 16; thence North 27° 45' East 160 feet; thence North 28° 40' West 1080 feet; thence South 61° 20' West 235 feet; thence North 28° 40' West 155 feet; thence South 61° 20' West 430 feet; thence North 28° 40' West 180 feet, [28] more or less, to the center of Jefferson Street, (formerly Playa Street); thence South 61° 20' West along the center line of Jefferson Street 1105 feet, more or less, to the point of beginning.

Excepting Therefrom that portion included in the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, California. Containing 97.38 acres, more or less.

PARCEL SEVEN

That portion of the 60 foot strip of land conveyed to Los Angeles Pacific Company by Clause 1 in Deed recorded in Book 3805, page 107 of Deed Records of Los Angeles County, extending North 33° 52' 30" East 452 feet and extending South 33° 52' 30" West 1008 feet from the intersection of the center line of Playa Street, as vacated by Order of the Board of Supervisors April 10th, 1905, with the center line of said 60 foot strip of land described in said deed to Los Angeles Pacific Company; said distances measured along the center line of said 60 foot strip; the southwesterly boundary of said 60 foot strip being a line bearing North 28° 40' West and the Northeasterly boundary thereof being a line bearing South 28° 40' East; containing 2.02 acres, more or less.

It Is Further Ordered, Adjudged, and Decreed, that the possession by the United States of said lands heretofore taken under the Order for Immediate Possession rendered by this Court on September 28, 1942, at 11:44 a. m., is hereby continued.

This cause is held open for such other and further orders, judgments and decrees as may be necessary in the premises. [29]

Dated: This 26th day of October, 1942, at 4:45 o'clock, P. M.

C. E. BEAUMONT

United States District Judge

Presented by:

LEO V. SILVERSTEIN

United States Attorney

IRL D. BRETT

Special Assistant to the Attorney General

FREDERICK H. STEINMETZ

Special Attorney, Lands Division,
Department of Justice

By Frederick H. Steinmetz

Attorneys for Plaintiff

Judgment entered Oct. 26, 1942. Docketed Oct. 26, 1942 C. O. Book 12, page 39. Edmund L. Smith, Clerk; by R. B. Clifton, Deputy.

[Endorsed]: Filed Oct. 26, 1942. [30]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORA-
TION, a Federal Corporation, acting in behalf of
DEFENSE PLANT CORPORATION, a Federal
Corporation,

Plaintiff,

vs.

* * * * *

SAMARKAND OIL COMPANY, a California corpo-
ration,

* * * * *

TREASURE COMPANY, LTD., a corporation,

* * * * *

Defendants.

FIRST AMENDED COMPLAINT [31]

Comes now the plaintiff, United States of America, and
upon leave of Court, first duly had and obtained, files
this, its First Amended Complaint, on behalf, and at the
request, of Reconstruction Finance Corporation, a Federal
corporation, by its duly authorized officer, hereinafter
referred to as the "Requesting Officer," and under the
direction and by the authority of the Attorney General of
the United States, and for cause of action against the
above named defendants and each of them, complains and
alleges:

I.

That the plaintiff is entitled, empowered and authorized to acquire by the exercise of the power of eminent domain, all of the property hereinafter described, for the uses and purposes hereinafter set forth.

II.

That pursuant to the provisions of the statutes hereinafter set forth the said Reconstruction Finance Corporation, by its said Requesting Officer for and in behalf of the United States, has determined that the property hereinafter described is suitable and necessary for the purposes of the United States, and has selected and designated such property for acquisition by the United States in these proceedings, and that said selection, designation, and determination ever since have been and now are, in full force and effect. That the purposes for which the plaintiff is taking said property, as hereinafter set forth, are necessary and constitute a public use, which use is authorized by law; that the acquisition of said property is and will be of greatest public benefit and to the least private injury; that plaintiff is informed and believes, and upon such information and belief alleges, that no part of said property has heretofore been appropriated to any public use; and, if any part or portion thereof has heretofore been so appropriated, the use to which said property is herein sought to be condemned and appropriated, is a more necessary and a paramount public use. [32]

III.

That plaintiff is informed and believes, and upon such information and belief alleges, that the property described under each parcel number as hereinafter set forth, constitutes the whole of the parcel and not a part or portion of a parcel. [33]

IV.

That plaintiff has named herein by their true names, or by fictitious names, all defendants known by it to have some interest in said property; that there may be other persons having some interests therein now unknown to plaintiff whom the plaintiff hereby designates as unknown persons, and makes such unknown persons defendants herein, and hereby prays leave of Court to bring any such unknown persons before the Court by service of process upon them if and when they are discovered to the end that title to all of said property may be vested in the United States of America to the extent hereinafter prayed for.

V.

That the defendants Doe One to Doe Two Thousand, inclusive, defendants One Doe Corporation to Five Hundred Doe Corporation, inclusive, defendants One Doe Company to Five Hundred Doe Company, inclusive, and defendants One A Doe to Two Hundred A Doe, inclusive, as the Executors or Administrators, respectively, of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive, are each sued or named herein under the fictitious names above set out, for the reason that plaintiff is ignorant of the true names of said defendants and of said decedents; that when the true names of said defendants and said decedents, or any of them, are discovered, plaintiff will amend accordingly, the pleadings and proceedings herein.

That One Doe Corporation to Five Hundred Doe Corporation, inclusive, are corporations organized and existing under the laws of one of the states of the United States; that One Doe Company to Five Hundred Doe

Company, are co-partnerships duly organized and existing, each one of which is composed of two or more co-partners; that One A Doe to Two Hundred A Doe, inclusive, are, respectively, the duly appointed, qualified and acting Administrators or Executors of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive. [34]

VI.

That this action is brought by the plaintiff under the authority and pursuant to the provisions of the Act of Congress, approved January 22, 1932, (U. S. C. 601-617) as amended, and Public Law 507, 77th Congress, approved March 27, 1942, and Executive Order 9217, issued by the President of the United States [35] on August 7, 1942, by virtue of and pursuant to authority vested in him by Title II of the Second War Powers Act, 1942, approved March 27, 1942 (Public Law 507, 77th Congress), which acts and executive order authorizes the Reconstruction Finance Corporation to acquire by condemnation property deemed necessary for military, naval, or other war purposes.

VII.

That the public use for which the property hereinafter described is sought to be condemned and taken is the establishment of a reservoir for the storing and conservation of natural gas to relieve a shortage of gas which would impede the war effort; that the said Reconstruction Finance Corporation has determined that it is necessary for war purposes to acquire the property hereinafter described, for the establishment of the said reservoir.

VIII.

That the Requesting Officer hereinbefore mentioned is Leo Neilson, Assistant Secretary of the Reconstruction

Finance Corporation; that said Reconstruction Finance Corporation is an agency of the United States; that by letter to the Attorney General of the United States, dated September 19, 1942, said Requesting Officer requested the institution of this proceeding for the purposes herein set forth, on behalf of the said Reconstruction Finance Corporation, and of Defense Plant Corporation, a Federal corporation; that said Defense Plant Corporation is an agency of, and is wholly owned and controlled by the aforesaid Reconstruction Finance Corporation.

That on September 18, 1942, said Reconstruction Finance Corporation, by a resolution duly adopted by its Board of Directors, resolved and determined that it was necessary for war purposes that the property, real, personal, and mixed, herein described, be acquired by condemnation, and that in connection therewith, the immediate right to occupy, use and improve said property be acquired; [36] that its secretary or assistant secretary be authorized, and are authorized, and directed, to request the Attorney General of the United States to cause the necessary proceeding to be instituted for the condemnation and taking of said property, and further, to cause the necessary action to be taken to occupy, use, and improve said property, pursuant to the provisions of the Act of Congress, approved March 27, 1942 (Public Law 507-77th Congress) and Executive [37] Order 9217, issued by the President of the United States, August 7, 1942, by virtue of and pursuant to authority vested in him by said Public Law 507, 77th Congress.

IX.

That the defendants City of Los Angeles, a municipal corporation, County of Los Angeles, a body politic and corporate of the State of California, the State of California, a sovereign state, Doe One to Doe Two Thousand, inclusive, One Doe Corporation, a corporation, to Five Hundred Doe Corporation, a corporation, inclusive, One A Doe to Two Hundred A Doe, inclusive, as the Executors or Administrators, respectively, of the Estates of One B Doe, Deceased, to Two Hundred B Doe, Deceased, inclusive, One Doe Company, a co-partnership, to Five Hundred Doe Company, a co-partnership, inclusive, and Unknown Persons, each claim some right, title, or interest in, or lien upon the property hereinafter described, or some part thereof, the exact nature of which such claim or claims is unknown to plaintiff. That all other defendants herein named claim to have some right, title or interest in, or lien upon, a part of the property hereinafter described.

X.

That the estate or interest in the property hereinafter described which the plaintiff in this action intends and seeks to take, acquire, condemn, hold, and own is:

(a) The full fee simple title to the real property hereinafter described, subject, however, to existing easements for public utilities;

(b) Title to all the personal property and trade fixtures, hereinafter described, free and clear of all liens and encumbrances, located on said real property

or on any part thereof, on the 28th day of September, 1942. [38]

XI.

The real property hereinabove mentioned which is to be taken and condemned in this action consists of those certain lots, pieces, or parcels of land situated in the County of Los Angeles, State of California, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, together with all buildings, structures, works and fixtures located in or upon said parcels of land or any of them and which are a part of the said realty; said parcels of land are more particularly described as follows, to-wit: [39]

* * * * *

XIII.

That the property which the plaintiff by this action intends and seeks to take, acquire, and condemn, hold and own, includes the following:

All pipe, machinery, appliances, equipment, tanks, structures, tools, supplies, and all other property, whether real or personal, which were located in or upon any of the said tracts of land hereinabove described on the 28th day of September, 1942, and which on said day were used, or were useful, in the operation of any oil and/or gas wells, upon any of said parcels of land, or in the treating, storing, or disposing of the products of any of such wells.

XIV.

That plaintiff is unable to determine at this time how much of the property generally described in the last preceding paragraph is to be deemed part of the real property on which it is located, for the reason that plaintiff does not now know the terms of the oil and gas leases under which said property was placed upon the premises for the purpose of producing oil and gas therefrom; and plaintiff therefore designates all of said property as personal property and trade fixtures, solely for the purpose of identifying the same as part of the property to be taken in this proceeding, and will ask leave of Court to amend this complaint accordingly if and when it shall be ascertained that any of the property herein designated as personal property and trade fixtures is, in fact, part of the realty upon which it is located.

XV.

That an inventory of all of the property referred to and described in the last two preceding paragraphs hereof is filed with [40] the Clerk of this Court for the inspection of any interested party, and the plaintiff will, upon demand, deliver a copy thereof to any party to this proceeding.

XVI.

That under the provisions of the Second War Powers Act of 1942, [41] approved March 27, 1942 (Public Law 507 - 77th Congress), it is provided, in part, as follows:

“Upon or after the filing of the condemnation petition, immediate possession may be taken and the prop-

erty may be occupied, used and improved for the purpose of the Act notwithstanding any other law;”

that by reason thereof the United States is entitled to immediate possession and use of the property herein sought to be condemned;

That the Assistant Secretary of the Reconstruction Finance Corporation, in a letter dated September 19, 1942, mentioned in Paragraph VIII of this complaint, stated, in part, that it is vital to the successful prosecution of the war that the United States be granted the immediate right of possession of the hereinabove described property, and requested the securing by the United States of such right of immediate possession.

Wherefore, plaintiff prays judgment;

1. That the Court ascertain and assess the value of the property herein sought to be taken and condemned and of each and every separate estate or interest therein.

2. Adjudging that the public uses for which plaintiff takes and condemns said property are necessary public uses of the plaintiff and that the uses to which said property are to be applied are uses authorized by law and that all of the said property so taken is necessary thereto.

3. Adjudging that the full fee simple title to the lands hereinbefore described is vested in the United States of America subject, however, to existing easements for public utilities; and further adjudging that title to all of the property, whether real, personal or mixed, used or useful

in connection with the operation of any oil and/or gas wells upon any of said parcels of land or in the treating, storing or disposing of the products of any such [42] wells is vested in the United States of America free and clear of all liens and encumbrances; and further adjudging that the right to just compensation for the lands and property hereinbefore described is vested in the persons entitled thereto, as their respective interests may appear and be [43] established by judgment herein.

4. That an order issue from this Court vesting the right to immediate possession in the plaintiff of the lands and property herein described and sought to be condemned in this action and directing all parties in possession thereof to forthwith yield up possession of the same to the plaintiff.

5. That all liens or encumbrances against any of the property sought to be taken and condemned herein be satisfied out of the award or awards to be made in this proceeding.

6. That the plaintiff have such other and further relief as to the Court may seem just and proper in the premises and as the nature of the case may require.

IRL D. BRETT

Special Assistant to The Attorney General

By Irl D. Brett

Attorney for Plaintiff

[Endorsed]: Filed Jan. 12, 1944. [44]

[Title of District Court and Cause]

ANSWER OF SAMARKAND OIL COMPANY,
A CORPORATION

Now comes defendant Samarkand Oil Company, a corporation, and answering plaintiff's first amended complaint for itself alone, and not for its co-defendants, admits, denies and alleges as follows, to wit:

* * * * *

VI.

Alleges that on September 28, 1942, this defendant was, and at all times since said date has been, the owner and entitled to the immediate possession of all the personal property situated upon the leasehold interest described in Paragraph V of this answer, being particularly set forth on pages 99 to 104, of the inventory filed by plaintiff herein and the additional personal property described in Exhibit "A", attached hereto and hereby made a part thereof. [45]

That said personal property so belonging to Samarkand Oil Company, a corporation, was on September 28, 1942 unlawfully taken by the United States of America, Reconstruction Finance Corporation, a Federal Corporation, and Defense Plant Corporation, a Federal Corporation, and their agents, and that said material and supplies, personal property and improvements were on the 28th day of September, 1942, of the reasonable value of \$261,104.14, and the United States of America, Reconstruction Finance Corporation, a Federal Corporation, and Defense Plant Corporation, a Federal Corporation, and their agents, at all times since said 28th day of September, 1942, so unlawfully retains possession of said property.

VII.

That in the event that the judgment decrees the taking of said real and/or personal property by condemnation, this defendant should have judgment against plaintiff for the following sums:

Leasehold interest, including	
well thereon	\$670,000.00
Personal property	\$261,104.14 [46]
* * * * * * *	* * *

Wherefore this defendant prays:

1st: That the above entitled action be dismissed and that it have judgment for its costs.

2nd: That in the event that said action is not dismissed as to either real or personal property, and a decree of condemnation is ordered, that plaintiff be by said judgment ordered and directed to pay this defendant as damages for the taking of said real and personal property, as follows:

Leasehold interest and well . . .	\$670,000.00
Personal property	\$261,104.14

3rd: For such other and further relief as to the Court may seem proper and for costs of suit.

BODKIN, BRESLIN & LUDDY

By Henry G. Bodkin

Attorneys for Defendant Samarkand Oil Company,
a corporation.

[Endorsed]: Apr. 30, 1945. [47]

[Title of District Court and Cause]

PROPOSED AMENDED ANSWER OF TREASURE
COMPANY, A CORPORATION

Now comes defendant Treasure Company, a corporation, and answering plaintiff's first amended complaint for itself alone and not for its co-defendants, files this its first amended answer, and answering said first amended complaint, admits, denies and alleges as follows, to wit:

* * * * *

XII.

Alleges that on the 28th day of September, 1942, this defendant, Treasure Company, a corporation, was, and at all times since said date has been, the owner and entitled to the immediate possession of all of the personal property and improvements upon the real property described in Paragraph V, VI, VII and VIII hereof, with the exception of a crude petroleum oil gravity retainer, referred to on page 112 of the inventory filed herein by plaintiff, and with the further exception of a pulling unit, which is referred to on page 109 of said inventory, filed herein by plaintiff. That on pages 105 to 113, both inclusive, of said inventory, plaintiff has described material and supplies which it alleges belong to Treasure Company and which plaintiff alleges were taken by Defense Plant Corporation. That Treasure Company alleges it was on the 28th day of September, 1942, the owner of all the material and supplies so described on said pages 105 to 113 inclusive of said inventory, with the exceptions hereinabove referred

to, and that there was upon the above described real property, on September [48] 28, 1942, certain personal property and improvements which were then and there owned by Treasure Company and which were not described or only partially described in said inventory, and that such personal property and improvements are described generally in Exhibit "A", attached hereto; that upon the trial of the above entitled action a more detailed description of the property referred to in said Exhibit "A" will be introduced in evidence.

That said personal property so belonging to Treasure Company was on September 28, 1942 unlawfully taken by the United States of America, Reconstruction Finance Corporation, a Federal Corporation, and Defense Plant Corporation, a Federal Corporation, and their agents, and that said material and supplies, personal property and improvements were on the 28th day of September, 1942, and at all times since have been and now are of the reasonable value of \$180,231.82, and the United States of America, Reconstruction Finance Corporation, a Federal Corporation, and Defense Plant Corporation, a Federal Corporation, and their agents, at all times since said 28th day of September, 1942, so unlawfully retained possession of said property.

XIII.

Alleges that in the event the judgment decrees the taking by condemnation of said real and/or personal property

for the purposes recited in plaintiff's complaint, defendant should have judgment against the plaintiff as follows:

Fletcher lease, including

well thereon \$1,000,000.00

Burns Leases Nos. 1, 2 and 3 . . . 1,000,000.00

Personal property 180,231.82

Total \$2,180,231.82 [49]

* * * * *

Wherefore this defendant prays:

1st: That the above entitled action be dismissed and that it have judgment for its costs.

2nd: That in the event that said action is not dismissed as to either real or personal property, and a decree of condemnation is ordered, that plaintiff be by said judgment ordered and directed to pay this defendant as damages for the taking of said real and personal property, as follows:

Fletcher lease, including

well thereon \$1,000,000.00

Burns Leases Nos. 1, 2 and 3 . . . 1,000,000.00

Personal property 180,231.82

Total \$2,180,231.82

3rd: For such other and further relief as to the Court may seem proper and for costs of suit.

BODKIN, BRESLIN & LUDDY

By Henry G. Bodkin

Attorneys for Defendant Treasure Company,
a corporation.

[Endorsed]: Lodged Apr. 30, 1945. Filed May 28, 1945. [50]

[Title of District Court and Cause]

CONCLUSIONS OF THE COURT AND DECISION ON MOTION FOR INJUNCTION

This is a motion for an injunction by this court to restrain proceedings in an action filed and pending in the Superior Court of the State of California in and for the County of Los Angeles. The injunction is sought by the plaintiff as auxiliary to an action in condemnation pending in this court to preserve what plaintiff alleges to be the priority of jurisdiction in the United States District Court.

The crucial and ultimate question for decision may be thus stated: As between the applicable Federal and State tribunals, has this court under the record before it acquired a priority of jurisdiction necessitating injunction against further proceedings by two private corporations of the State of California against another corporation of the same State to recover the possession of specific personal property in civil actions pending therein under the laws of the State of California? We think the question should be answered in the negative. Accordingly the motion for injunction filed herein March 10, 1945 is denied. Exceptions allowed movents. See Rule 81(7), F. R. C. P. [51]

Pursuant to investiture in the Second War Powers Act, (50 U. S. C. A. 632) to the Reconstruction Finance Corporation, that body, under date of September 19, 1942, on behalf of the Defense Plant Corporation, an affiliate and subsidiary, caused proceedings to be instituted in this court to acquire by condemnation certain real property within the jurisdiction of this court. The complaint was filed September 28, 1942, and on that day an order for

possession was entered. The only service as far as the property involved in this motion is concerned was by posting on the real property involved. Neither the letter of authority authorizing the institution of the action, the complaint in condemnation, nor the order for possession provided for the condemnation or acquisition of personal property. These instruments all specifically called for the condemnation of land only.

Notwithstanding the limitations of the order for possession, the seizure made by the Government on September 28, 1942, included personal property, as well as real property, of the Treasure Company and Samarkand Oil Company, the two defendants in this action that are resisting the instant motion for injunction.

The purpose of the acquisition of the subject properties was to provide gas storage facilities for defense needs on the site of depleted oil wells. However, the record discloses that personal property not affixed to the realty was seized by the agents of the Government and that, also, a producing oil well is now in the lands of the Government agents.

In August, 1943, the Defense Plant Corporation and the Union Oil Company of California entered into a contract for the operation of the acquisitioned property by the [52] Union Oil Company of California.

On November 15, 1943, the Treasure Company and the Samarkand Oil Company filed claim and delivery actions against the Union Oil Company in the Superior Court of the State of California in and for the County of Los Angeles. Service of process therein upon the Union Oil Company followed on November 16, 1943. The Union

Oil Company filed answers in such actions on January 3, 1944.

On November 24, 1943, an admittedly ineffectual amendment to the complaint in condemnation was filed in this court. Later, on January 12, 1944, an authorized amendment to the complaint in condemnation was filed herein. This pleading specified as within the scope of the condemnation proceeding the personal property which is the bone of contention in the proceeding before the court. On January 5, 1944, the Defense Plant Corporation filed in the State court actions in claim and delivery its application to intervene therein. Such application was granted. On February 5, 1945, the Defense Plant Corporation duly filed and presented in the Superior Court motions to abate the claim and delivery actions in such State court. These motions to abate the claim and delivery actions were by the said Superior Court denied. (See memorandum opinion by Judge William J. Palmer in Exhibit "E" herein). On March 10, 1945, the instant motion for injunction with its accompanying petition was filed in this court. The motion was argued and submitted for decision by the respective parties on March 29, 1945.

The question of priority of jurisdiction necessarily involves the legal nature of an action to recover possession of personal property on one hand, and the legal nature of federal eminent domain proceedings on the other. [53]

Preliminarily to a consideration under the record before us as to the legal nature of the actions in the State and Federal courts with which we are concerned we should keep in mind the restrictive terms of the ancient Act of March 2, 1793, now embodied in Section 265 of the Judicial Code, Title 28, U. S. C. A., Section 379.

This sweeping prohibition of interference with proceedings in State courts by Federal injunction provides that "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where injunction may be authorized by any law relating to proceedings in bankruptcy."

In the recent decision in *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, (1941), the Supreme Court, after recounting the history and sensitive field of judicial authority involved in this legislation, reaffirmed the doctrine enunciated by the Court in its earlier decision in *Kline v. Burke Construction Co.*, 260 U. S. 226, where it stated: "The rank and authority of the courts (Federal and State) are equal but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply. Since that necessity does exist in actions in rem and does not exist in actions in personam, involving a question of personal liability only, the rule applies in the former but does not apply in the latter."

So important has been the Congressional circumspection in avoiding occasions for placing the tribunals of the [54] States and of the Union in any collision that the Supreme Court has deemed it necessary to succinctly mark the bounds of priority of jurisdiction in the following graphic manner: "* * * where a state court first acquires control of the res, the federal courts are disabled from exercising

any power over it, by injunction or otherwise." *Toucey v. New York Life Ins. Co.*, *supra*.

And "the restrictions of Section 265 of the Judicial Code upon the use of the injunction to stay litigation in the State court confine the District courts even though such an injunction is sought in support of an earlier suit in the Federal Courts." *Southern Ry. Co. v. Painter*, 314 U. S. 155, (1941).

We turn now to examine the nature and character of the two types of action which concern us in this motion under consideration.

An action to recover possession of personal property is a statutory remedy. Section 3379 of the Civil Code of California provides that "A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure." Sections 509 to 520 of the Code of Civil Procedure of the State of California provide for the provisional remedy of "Claim and Delivery of personal property." These later procedural statutes merely provide an auxiliary remedy by which, when a party brings an action to recover personal property, he may, upon compliance with statutory requisites, "claim" that the property be immediately delivered to him at the commencement of the action and without awaiting trial. *Faulkner v. First National Bank*, 130 Cal. 258.

Thus it is clear that in an action under the laws of the State of California to recover the possession of [55] personal property the statutory auxiliary process of "claim and delivery" is optional. The nature of the action to recover personalty is unaffected regardless of whether or not the provisional remedy is applied. In other words,

the invoking of the provisional remedy is in no way a necessity to the cause of action. It is merely an additional aid to secure in advance the judgment that is sought by the plaintiff under the laws of the State of California.

It is settled under California decisions that an action for the recovery of personal property is what is termed a mixed action, being partly in rem and partly in personam. The action is in rem so far as the specific recovery of the chattels is concerned, and in personam in so far as damages are sought. *Williams v. Atchison, etc. Ry. Co.*, 156 Cal. 140; *Claudius v. Aguirre*, 89 Cal. 501; *Wellman v. English*, 38 Cal. 583.

Any argument that the actions in the State court did not bring into the judicial custody of such court the specific property to which the instant motion is directed as of their date of institution, stems, we think, from an erroneous conclusion that the failure to invoke the California provisional remedy of "claim and delivery" changes the nature and essential character of replevin actions. Inherently the actions in the State court are not determinable by the utilization of the auxiliary process provided by the local law. It is settled law that where the action is in rem the effect is to draw to the court attaching jurisdiction the control, actual or potential, of the res. And no matter how inadequate "res" may be as a descriptive label, it is not true that a money claim "in personam" cannot be a "res." Such a claim in an action "quasi in rem" can be properly so characterized. *Brooklyn Trust Co. v. Kelby*, (C. C. A. 2), 134 F. 2d 105 at 116. [56]

The legal nature of a condemnation proceeding is thoroughly settled. A condemnation proceeding is a proceeding in rem. *U. S. v. Dunnigton*, 146 U. S. 228; *In re Condemnation Suits by United States*, 234 Fed. 443.

It thus appears from pertinent authorities that the actions in the State court and the proceedings in this District court are both predicated on causes of action which seek to affect a specific res, and thus are in rem and quasi in rem in nature. See *Lee v. Silva*, 197 Cal. 364.

But the solution of the problem before us is dependent also upon the time of acquisition of jurisdiction in the State court in the actions to recover the possession of personal property as well as the nature of the action. Under applicable law jurisdiction of a court in civil actions is acquired from the time of service of summons. Section 416, Code of Civil Procedure. Interpretations of this code section establish that the court whose process is first served has the prior jurisdiction. 7 Cal. Jur. 593. It has been shown at the time of the hearing of the motion for injunction that the process in the two local actions to recover the possession of personal property was served upon the defendant Union Oil Company of California before the amended complaint in the instant condemnation proceeding was filed. It is evident that the State court acquired jurisdiction at least nine days before there was any specific token of acquisition by the Government of the personal property in dispute.

Now as to the acquiring of jurisdiction in a Federal eminent domain proceeding it has been reliably stated that the filing of the petition is the first step in a condemnation proceeding of the judicial type and is a jurisdictional prerequisite to the authority of the court to entertain the

proceeding. Federal Eminent Domain Manual, Lands Division, [57] Department of Justice, page 371. See, also, Lewis on Eminent Domain, Volume 2, section 867; Nichols on Eminent Domain, Volume 2, page 1041.

While no eminent domain decision has been called to our attention and we have found none precisely holding that the court's jurisdiction in eminent domain proceedings of the judicial type attaches as of the filing of the petition in condemnation, this appears to be the general rule in so far as in rem proceedings in general are concerned.

In the early case of *Farmers Loan and Trust Co. v. Lake Street Elev. R. R. Co.*, 177 U. S. 51, the rule followed since was announced by the court as follows: "As between the immediate parties in a proceeding in rem jurisdiction must be regarded as attaching when the bill is filed and process has been issued, * * *." This rule as to priority of jurisdiction in actions in rem or quasi in rem has been confirmed in the comparatively recent decision in *Princess Lida of Thurn et al. v. Thompson et al.*, 305 U. S. 456 (1939), in the following pertinent language: "We turn to the suit instituted in the District Court to ascertain what relief was there sought. * * * Certain it is, therefore, that if both courts were to proceed they would be required to cover the same ground. This of itself is not conclusive of the question of the District Court's jurisdiction, for it is settled that where the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may

proceed with the litigation at least until judgment is obtained in one of them which may be set up as *res judicata* in the other. On the other hand, if the two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to [58] proceed with the cause and grant the relief sought the jurisdiction of the one court must yield to that of the other. We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. (Citing cases). The doctrine is necessary to the harmonious cooperation of federal and state tribunals." (Citing *United States v. Bank of New York & Trust Co.*, 296 U. S. 463).

The same jurisdictional principle enunciated in these decisions of the Supreme Court has been restated by our Circuit Court of Appeals in *Hutchins v. Pacific Mut. Life Ins. Co. of California, et al.*, 97 F. 2d 58, (1938), wherein a specific *res* was in the possession of the California court and a dispute arose as to the priority of jurisdiction between such court and the Federal Court and wherein Judge Healy writing for the court stated: "It is settled law that

where a State and a Federal court both have concurrent jurisdiction in suits in rem or quasi in rem, the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other."

While it is probably true under the broad powers reposed by Congress in the Executive by Title II of the Second War Powers Act that the personal property involved in this controversy might have been acquisitioned with the land or acquired as incidental thereto, the record evidence [59] before us clearly proves that no such situation existed. As previously adverted to, all of the memorials, instruments of authority and pleadings leading up to and accompanying the acquisition by the plaintiff pertain to land, and only to land. Nor is there any indication in the resolutions of the acquiring agency of September 19, 1942 and October 19, 1942 that evince any intention to acquire the personal property in dispute as part of the natural gas storage facility sought through the condemnation proceedings instituted in this court.

The fair preponderance of the evidence before us establishes, we think, that the present claim that it was the intention from the inception of the project to acquire the personalty is an afterthought conceived to avoid possible consequences of the seizure of September 28, 1942.

There can be no serious claim of ratification by plaintiff of the seizure of the personalty because before any adequate manifestation by plaintiff of an intention to acquire such property was evident, the State court had already

acquired jurisdiction of the res. The factual situation here is dissimilar to that before the court in *Yearsley v. Ross Construction Co.*, 309 U. S. 18. Moreover, the *Yearsley* decision does not enunciate the principle that ratification of a taking without condemnation proceedings ipso facto confers jurisdiction on the United States court.

The sole method chosen to acquire the necessary war facility to which the action in this court relates was by condemnation proceedings of the judicial type brought as Title II of the Second War Powers Act specifies in accordance with the Act of August 1, 1888, Title 40 Sections 257, 258, U. S. C. A. One of the jurisdictional essentials of a proceeding in condemnation of the judicial type is that the [60] property sought to be taken shall be described in the petition (complaint). See Section 1244, California Code of Civil Procedure.

It is clearly established by the record before us that no specification whatever of any personalty was made in any of the proceedings until the month of October, 1943, when for the first time an authorization to amend the pleadings so as to include personal property was given, and it was not until the following January that the amended complaint directed to the acquisition of the personal property in issue was filed.

Thus we find that the earliest effectual and authorized acquiring of the personal property by the Government was subsequent to the acquiring of jurisdiction over the same res by the State court in the recovery actions pending

therein. As no other type of authority than judicial has been invoked or applied by plaintiff in the acquisition under consideration, we consider argument and authorities as to the lodgment in the United States of other processes in eminent domain as academic and irrelevant to the motion before the court.

We conclude with the observation that the injunction to restrain proceedings in either of the State court actions is unnecessary under the record before us. In the local suits no relief to the oil companies other than money judgments appears to be now possible. Such an outcome in the State court would neither impair nor defeat the jurisdiction of this court in the condemnation proceeding.

The petition for injunction is denied. The motion for injunction is denied. Exceptions allowed movents.

There is some doubt as to the necessity of formal findings of fact, conclusions of law and judgment herein by [61] reason of the inapplicability of the Federal Rules of Civil Procedure in condemnation proceedings. Rule 81(a)7. However, should counsel desire formal findings of fact, conclusions of law and judgment they should be in conformity hereto prepared and presented to the Judge for consideration within five days from date hereof.

Dated June 12, 1945.

PAUL J. McCORMICK

United States District Judge.

[Endorsed]: Filed Jun. 12, 1945. [62]

[PLAINTIFF'S EXHIBIT NO. 2]

AMENDATORY RESOLUTION

Whereas, this Corporation at the request of Defense Plant Corporation has caused condemnation proceedings to be instituted in the name of the United States pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, for the purpose of obtaining possession of the lands described in the attached Exhibit "A", for use as a storage reservoir for natural gas (Playa del Rey Natural Gas Storage Project, Plancor 1406); and

Whereas, Defense Plant Corporation has requested this Corporation to arrange for the filing of a Declaration of Taking in the condemnation proceedings in order that title to said lands may vest in the United States at the earliest possible time;

Resolved, that the Resolution adopted by the Board of Directors of this Corporation on September 18, 1942 be amended by adding thereto the following Resolved Fourth, Resolved Fifth and Resolved Sixth:

"Resolved Fourth: It is necessary and advantageous in carrying out the authority vested in Defense Plant Corporation to acquire by condemnation the land described in Exhibit 'A'.

"Resolved Fifth: The Treasurer or Assistant Treasurer and the Secretary or Assistant Secretary of this Corporation be, and hereby are, authorized

and directed to execute under the seal of this Corporation a Declaration of Taking covering the land described in Exhibit 'A' in form and substance satisfactory to General Counsel or an Assistant General Counsel of this Corporation and to arrange for the delivery of such Declaration of Taking to the Attorney General of the United States for appropriate action.

“Resolved Sixth: Just compensation for the land described in Exhibit 'A' is estimated to be Seven Hundred Forty Thousand Four Hundred Sixty-nine Dollars (\$740,469).”

* * * * *

The foregoing Resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 19th day of October, 1942.

Leo Nielson

Secretary

Reconstruction Finance Corporation

Case No. 2454-B Civ. U. S. vs. Land. Plf's Exhibit No. 2 in Evidence. Date 7/2/45. Clerk, U. S. District Court, Sou. Dist. of Calif. R. B. Clifton, Deputy Clerk. [63]

[Title of District Court and Cause]

PETITION FOR INJUNCTION

Comes now the United States of America, petitioner herein, by the authority and at the direction of the Attorney General of the United States, and respectfully shows unto this Honorable Court:

I.

That heretofore, to wit, on September 18, 1942, Reconstruction Finance Corporation, a federal corporation, an agency of the United States of America, by resolution of its Board of Directors, determined that it is necessary that the lands hereinafter referred to be acquired for war purposes by condemnation proceedings, and that in connection therewith the immediate right to occupy, use and improve such lands be acquired, and thereupon requested the Attorney General of the United States to cause the necessary proceedings to be instituted for the condemnation of said lands, and to procure a court order granting immediate right to occupy, use and [64] improve said lands, pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), and Executive Order 9217, issued by the President of the United States on August 7, 1942; that upon said determination by, and request of, said Reconstruction Finance Corporation, petitioner, on September 28, 1942, filed its Complaint in Condemnation, in this Court, as Civil No. 2454-B, wherein and whereby it sought to condemn the lands designated in the aforesaid determination and request of said Reconstruction Finance Corporation. A true and correct copy of said resolution and request is attached hereto, marked "Exhibit A", and made a part hereof. Said Complaint

in Condemnation, filed as aforesaid, is by reference incorporated herein and made a part hereof.

II.

That thereupon, to wit, on September 28, 1942, upon the filing of said Complaint in Condemnation in this Court as aforesaid, this Court made and entered its order, by this reference incorporated herein and made a part hereof, granting the petitioner, United States of America, immediate possession of the property described in its said Complaint; and thereupon and pursuant to said order petitioner took and went into possession of all the property described in said Complaint, and since that date petitioner has been, and now is, in possession of all of said property. That petitioner took possession of said property as aforesaid by and through the Defense Plant Corporation, a federal corporation, an agency of the aforesaid Reconstruction Finance Corporation; that upon taking possession of said property as aforesaid, said Defense Plant Corporation employed the Union Oil Company of California, a corporation, to make an inventory of the oil well machinery and equipment located on the property taken as aforesaid, and to conserve, maintain and operate said property for and on behalf of petitioner.

III.

That thereafter on October 26, 1942, petitioner, United States of America, by and through said Reconstruction Finance Corporation, filed a Declaration of Taking in the aforesaid condemnation action, Civil No. 2454-B, [65] pursuant to Section 258a of 40 U. S. C. A., in the above entitled Court, wherein and whereby it took the full fee simple title, subject only to existing easements for public utilities, in and to all the property described in the afore-

said Complaint in Condemnation and in said Declaration of Taking, and simultaneously deposited in the Registry of this Court the estimated just compensation for the property so taken. Said Declaration of Taking is by reference incorporated in and made a part hereof.

IV.

That thereafter on October 4, 1943, the said Reconstruction Finance Corporation, by an amendatory resolution duly and regularly adopted by its Board of Directors, approved, ratified and confirmed the taking, condemnation and possession of, among others, all the property hereinafter referred to, and the inclusion thereof in this proceeding. A true and correct copy of said amendatory resolution, and the request to the Attorney General of the United States therein provided for, is annexed hereto, marked "Exhibit B", and made a part hereof.

V.

That thereafter on January 12, 1944, pursuant to the request of the said Reconstruction Finance Corporation to the Attorney General of the United States, and by the authority of the said Attorney General, the petitioner, United States of America, by its attorneys of record, filed herein its First Amended Complaint, which is, in so far as is material and pertinent to this petition, by reference incorporated herein and made a part hereof; that thereafter on, to wit, January 20, 1944, said petitioner filed in said condemnation proceeding the inventory referred to in Paragraph XV of its said First Amended Complaint, a true copy of which, in so far as is material and pertinent to this petition, is annexed hereto, marked "Exhibit C", and made a part hereof.

VI.

That thereafter on April 30, 1945, Samarkand Oil Company, a corporation, and a defendant in said condemnation proceeding, appeared and filed its Answer therein to petitioner's First Amended Complaint, and [66] alleged, among other things, that it was the owner of a certain oil and gas sublease on a portion of the lands described in petitioner's Complaint, and First Amended Complaint, and in its Declaration of Taking filed as aforesaid; and said defendant further alleged that it was, on September 28, 1942, the owner of all the personal property situate on its aforesaid leasehold, particularly described in its said Answer; and said defendant further alleged that said personal property was, on said September 28, 1942, unlawfully taken by petitioner, United States of America, Reconstruction Finance Corporation, a federal corporation, and Defense Plant Corporation, a federal corporation, and their agents, and that said personal property was, on said date, of the reasonable value of \$261,104.14; and said defendant in said Answer further alleged that in the event that judgment in said condemnation proceeding decrees the taking of its said real and/or personal property by condemnation, said defendant should have judgment against petitioner for the alleged value thereof.

VII.

That thereafter on May 28, 1945, Treasure Company, a corporation, and a defendant in said condemnation action filed as aforesaid, filed an Amended Answer to petitioner's First Amended Complaint in Condemnation filed as aforesaid, and alleged, among other things, that it was the owner of certain oil and gas subleases on a portion of the lands described in petitioner's Complaint and First

Amended Complaint in Condemnation and in its Declaration of Taking filed in this Court as aforesaid; and said defendant further alleged that it was, on September 28, 1942, the owner of certain personal property and improvements upon the real property described in its Amended Answer, which personal property and improvements were generally described in an exhibit annexed to said Amended Answer; and said defendant further alleged in said Amended Answer that said personal property was, on September 28, 1942, unlawfully taken by Petitioner, the United States of America, Reconstruction Finance Corporation, a federal corporation, and Defense Plant Corporation, a federal corporation, and their agents, and that said personal property was, on September 28, 1942, of the value of [67] \$180,231.82; and said answer further alleged that, in the event that judgment in said condemnation proceeding decrees the taking by condemnation of said real and personal property for the purposes recited in petitioner's First Amended Complaint, the said defendant should have judgment for the alleged value of its aforesaid leasehold estate and personal property.

VIII.

That by reason of the pleadings filed as aforesaid in said condemnation proceeding, the said proceeding is now, and has been since April 30, 1945, at issue as to the real and personal property claimed by the defendant Samarkand Oil Company and described in its said answer; and the said proceeding is now, and has been since May 28, 1945, at issue as to the real and personal property claimed by the defendant Treasure Company and described in its said Amended Answer.

IX.

That thereafter on September 27, 1945, the said Samar-kand Oil Company filed a complaint in the Superior Court of the State of California, in and for the County of Los Angeles, as Case No. 505,968, against the Union Oil Company of California, as sole defendant, for the recovery of the possession of the personal property, (or its value in damages for withholding) which is described in its answer filed in the condemnation suit as aforesaid, notwithstanding that said defendant then well knew that possession of said property was, in truth and in fact, taken by your petitioner in said condemnation proceeding, and that said defendant had joined issue in said proceeding and submitted to this Court the determination of your petitioner's right to take and condemn said personal property.

X.

That on September 27, 1945, the said Treasure Company filed in the Superior Court of the State of California, in and for the County of Los Angeles, as Case No. 505,967, a complaint against the Union Oil Company of California, as sole defendant for the recovery of possession of the personal property, (or its value in damages for withholding) which [68] is described in its amended answer filed in the condemnation suit as aforesaid, notwithstanding that said defendant then well knew that possession of said property was, in truth and in fact, taken by your petitioner in said condemnation proceeding, and that said defendant had joined issue in said proceeding and submitted to this Court the determination of your petitioner's right to take and condemn said personal property.

XI.

That on November 10, 1945, the said Samarkand Oil Company filed in the Superior Court of the State of California, in and for the County of Los Angeles, an action against Union Oil Company of California, as sole defendant, Case No. 507,386, for damages for alleged wrongful production and removal of gas and oil from Samarkand Oil Company's leasehold estate described in its answer filed in the condemnation proceeding as aforesaid; notwithstanding that said defendant then well knew that petitioner had filed in said condemnation proceeding its Declaration of Taking, which included the said leasehold estate, and had deposited in the Registry of this Court the estimated just compensation therefor, and that said defendant had filed its answer in said condemnation proceeding and submitted the determination of its rights to the jurisdiction of this Court

XII.

That on November 10, 1945, the said Treasure Company filed in the Superior Court of the State of California, in and for the County of Los Angeles, an action against Union Oil Company of California, as sole defendant, Case No. 507,385, for damages for alleged wrongful production and removal of gas and oil from Treasure Company's leasehold estate described in its amended answer filed in the condemnation proceeding as aforesaid; notwithstanding that said defendant then well knew that petitioner had filed in said condemnation proceeding its Declaration of Taking, which included the said leasehold estate, and had deposited in the Registry of this Court the estimated just compensation therefor, and that said defendant had filed its amended answer in said condemnation proceeding and

submitted the determination of its rights to the jurisdiction of this [69] Court.

XIII.

That the property described in and which forms the subject matter of the actions described in Paragraphs IX, X, XI, and XII hereof is a portion of the property taken, condemned, and possessed by petitioner, United States of America, in this proceeding, being the property more particularly described in its First Amended Complaint on file herein, and in Exhibit C hereof.

XIV.

That at and during all the times mentioned herein and now, and in and about the custody, control, management, and operation of, among others, the property in this petition referred to and which is the subject matter of the aforesaid actions filed by Samarkand Oil Company and Treasure Company in the Superior Court of the State of California as aforesaid, the said Union Oil Company of California is, and was at all times herein mentioned, the agent of petitioner, United States of America; that at all such dates and times your petitioner was, and is, the principal and the real and only party in interest in connection with the possession, custody, control, management, and operation of the property described and referred to in the aforesaid actions filed by the defendants Samarkand Oil Company, a corporation, and Treasure Company, a corporation, in the Superior Court of the State of California, as aforesaid. That the facts in this paragraph set forth were well known to said Samarkand Oil Company and said Treasure Company at and long prior to the time of the filing of their aforesaid actions against Union Oil Company of California, in the Superior Court of the State of California.

XV.

That in the taking, retaining, and condemnation of the property described herein your petitioner, United States of America, is exercising a power of sovereignty and is subject only to the constitutional limitations governing the exercise of such power and to such orders and decrees as this Honorable Court may make during this proceeding. [70]

XVI.

That by reason of the premises, the Superior Court of the State of California, in and for the County of Los Angeles, was and is without jurisdiction to hear or determine any of the matters and issues in the actions described in Paragraphs IX, X, XI, and XII hereof, or to make any order, or judgment, for possession, or to fix any measure of damages for the taking and possession of said property, or any portion thereof.

XVII.

That to permit the defendants Samarkand Oil Company, a corporation, and Treasure Company, a corporation, to proceed further, or to judgments, in the actions described in Paragraphs IX, X, XI, and XII hereof, would result in unseemly conflict with the power and jurisdiction of this Court in this condemnation proceeding in this; that it would tend to wrongfully and unlawfully hamper, restrict, and impede petitioner, United States of America, in and about the exercise of its power of eminent domain, and would tend to obstruct, impede, embarrass and delay this Honorable Court in its determination and enforcement of the constitutional and statutory provisions relative to, the

taking and condemnation for public use of the property which forms the subject matter of this suit, and of the determination of the just compensation to be paid for such taking and condemnation, and the apportionment of such compensation to the parties who may be entitled thereto of which it has prior and exclusive jurisdiction.

XVIII.

That in the employment of Union Oil Company of California to conserve, maintain and operate the aforesaid real and personal property, for Defense Plant Corporation, as aforesaid, said Defense Plant Corporation covenanted and undertook to save and hold harmless said Union Oil Company of California from and against any claims and demands or causes of action on the part of third persons resulting from the condemnation, taking or acquisition of the site or any portion thereof, or the possession or occupancy thereof by Union Oil Company of California under its said agreement of employment by said Defense Plant Corporation; that by joint resolution [71] of Congress (Public Law 109, 79th Congress), approved June 30, 1945, effective July 1, 1945, Defense Plant Corporation, among others, was dissolved, and its powers, functions, and liabilities were transferred to said Reconstruction Finance Corporation; that Reconstruction Finance Corporation is wholly owned by your petitioner, United States of America; that by reason of the facts aforesaid, petitioner is the real party in interest in the defense of the aforesaid actions in the Superior Court of the State of California, although not before said court and not subject to its jurisdiction, and any judgments rendered therein would, in effect, be a judgment against it, in absentia, and payable out of its treasury.

Wherefore, petitioner being without other remedy in the premises, prays this Honorable Court for an order enjoining and restraining the defendants Treasure Company, a corporation, and Samarkand Oil Company, a corporation, and their respective agents and attorneys, successors and assigns, and each of them, from proceeding further in the actions described in Paragraphs IX, X, XI, and XII hereof, or from doing or attempting to do any act, or taking any proceeding, tending to fix or determine their rights, or the rights of any or either of them, or of petitioner, United States of America, or any of its agencies and their agents, in connection with, resulting from, or growing out of the entry upon, taking, and continued possession or condemnation of the property, or any portion thereof, described in petitioner's First Amended Complaint on file herein, and except such proceedings in this Court as are provided for by its rules of practice or by the laws in such case made and provided.

Petitioner further prays for such other and further relief in the premises as the nature of the case may require and as to the Court shall seem meet, just and equitable.

Dated: This 11th day of February, 1946.

UNITED STATES OF AMERICA

By Eugene D. Williams

Special Assistant to the Attorney General

Of Counsel for Petitioner:

J. F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney, Lands Division,

Department of Justice. [72]

EXHIBIT A
RESOLUTION

Whereas, Defense Plant Corporation, a corporation created pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, deems it necessary for war purposes to acquire certain lands in the vicinity of Los Angeles, California, (Playa Del Rey Gas Storage Project, Plancor 1406) for use as a storage reservoir for natural gas; and

Whereas, Defense Plant Corporation has been unable to acquire title by purchase to the lands required for said storage reservoir, which lands are fully described in Exhibit "A" attached hereto and made a part hereof; and

Whereas, This Corporation has been requested by Defense Plant Corporation to cause condemnation proceedings to be instituted in the name of the United States pursuant to the provisions of the act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, issued by the President of the United States on August 7, 1942, by virtue of and pursuant to authority vested in him pursuant to said Public Law 507, 77th Congress, *supra*;

Whereas, Defense Plant Corporation has agreed to make available the funds necessary to pay the costs of acquiring by condemnation the lands described in said Exhibit "A";

Resolved First, It is necessary for War purposes that the lands described in Exhibit "A" be acquired by condemnation proceedings and in connection therewith that the immediate right to occupy, use and improve such lands be granted.

Resolved Second, The Secretary or Assistant Secretary of this Corporation be and hereby are authorized and directed to request the Attorney General of the United States to cause the necessary proceedings to be instituted for the condemnation of such lands and further, to cause the necessary action to be taken to procure a court order granting immediate right to [73] occupy, use and improve the lands described in Exhibit "A", pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217, issued by the President of the United States on August 7, 1942, by virtue of and in pursuance to authority vested in him pursuant to said Public Law 507, 77th Congress, *supra*.

Resolved Third, That the General Counsel or an Assistant General Counsel of this Corporation is hereby authorized and directed to take all necessary and appropriate action to carry out the instructions and authorizations provided in this resolution.

* * * * *

The foregoing resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 18th day of September, 1942.

(Seal)

LEO NIELSON

Secretary

Reconstruction Finance Corporation
Plancor 1406 [74]

RECONSTRUCTION FINANCE CORPORATION
Washington

September 19, 1942

The Honorable Francis Biddle
Attorney General of the United States
Washington, D. C.

Dear Sir:

In connection with the establishment of a reservoir for the storing and conservation of natural gas (Playa Del Rey Natural Gas Storage Project, Plancor 1406) by Defense Plant Corporation, a corporation created pursuant to Section 5(d) of the Reconstruction Finance Corporation Act, as amended, to relieve a shortage of gas which would impede the war effort, this Corporation has determined that it is necessary for war purposes to acquire certain lands situated in the City of Los Angeles, State of California.

Therefore, pursuant to the provisions contained in the Act of Congress approved January 22, 1932 (15 U. S. C. 601-617) as amended, and Public Law 507, 77th Congress approved March 27, 1942, and Executive Order 9217 issued by the President of the United States on August 7, 1942, by virtue of and pursuant to authority vested in him by Title II of the Second War Powers Act 1942, approved March 27, 1942 (Public Law 507, 77th Congress) authorizing Reconstruction Finance Corporation to acquire and dispose of property deemed necessary for military, naval or other war purposes, it is requested that you cause the necessary proceedings to be instituted for the acquisition of the lands described in the enclosed Exhibit "A". The estate to be acquired is the full fee simple title subject to existing easements for public utilities.

You are advised that it is vital to the successful prosecution of the war that the United States be granted the immediate right to occupy, use and improve the lands described in Exhibit "A". It is, therefore, requested that you cause the necessary action to be taken to procure an order from the court granting the United States the immediate right to occupy, use and improve said lands pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and Executive Order 9217.

Arrangements have been made for the procurement of title evidence covering the lands to be condemned. Such title evidence will be made available to the United States Attorney. [75]

The Honorable Francis Biddle

Page 2

There are enclosed three copies of a description of the lands to be condemned entitled Exhibit "A" and three copies of a plat showing the location of said lands to be condemned.

Very truly yours,

LEO NEILSON (signed)
Assistant Secretary

Enclosures

WJR:eb

Pursuant to T. 28 U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

(Seal)

J. EDWARD WILLIAMS
Acting Head, Lands Division
Department of Justice [76].

EXHIBIT B

AMENDATORY RESOLUTION

Whereas, This Corporation at the request of Defense Plant Corporation, has caused condemnation proceedings to be instituted in the name of the United States for the purpose of obtaining title to certain lands required as a storage reservoir for natural gas (Playa Del Rey Natural Gas Storage Project—Plancor 1406), which lands are described in the Exhibit 'A' attached to the Declaration of Taking forwarded to the Department of Justice on October 22, 1942; and

Whereas, Defense Plant Corporation has taken possession of and desires to acquire by condemnation title to certain machinery and equipment located upon said lands and has requested this Corporation to request the Department of Justice to amend the petition filed for the condemnation of said lands so as to include certain machinery and equipment located upon the said land, which machinery and equipment is described in the attached Exhibit 'C'.

Resolved, That the resolution adopted by the Board of Directors of this Corporation on September 18, 1942, as amended, be and hereby is further amended by adding thereto a Resolved Seventh and Resolved Eighth to read in full as follows:

'Resolved Seventh, That it is necessary and advantageous in carrying out the authority vested in Defense Plant Corporation to acquire by condemnation the machinery and equipment described in said Exhibit 'C'.

'Resolved Eighth, That the Secretary or an Assistant Secretary of this Corporation be and hereby is authorized and directed to request the Attorney General of the United [77] States to take such action as may be necessary for the acquisition by condemnation of the machinery and equipment described in said Exhibit 'C'.

* * * * *

The foregoing resolution was duly adopted by the Board of Directors of Reconstruction Finance Corporation on the 4th day of October, 1943.

Seal

/s/ A. T. HOBSON

Secretary

Reconstruction Finance Corporation [78]

RECONSTRUCTION FINANCE CORPORATION
Washington

October 6, 1943

Honorable Francis Biddle
Attorney General
Department of Justice
Washington, D. C.

Re: Plancor 1406—Playa Del Rey Gas Storage Project
(U. S. v. Certain Parcels of Land in the City and
County of Los Angeles, California, et al.,
No. 2454-B, Civil.

Dear Mr. Attorney General:

On September 19, 1942 this Corporation requested you to institute condemnation proceedings for the acquisition

of certain land situate in Los Angeles County, State of California, in accordance with the provisions of Public Law 507—77th Congress and Executive Order 9217.

The proper operation of the project for which lands are being acquired will necessitate the acquisition of the machinery and equipment described in the attached Exhibit "C" which was located upon the lands taken and is owned ostensibly by the owners of said land. It is requested that you cause the necessary action to be taken for the acquisition of the machinery and equipment described in the attached Exhibit "C" in addition to the lands described in the Declaration of Taking which has been filed in the above-entitled proceeding.

Arrangements have been made for the procurement of evidence as to the ownership of said machinery and equipment and such evidence will be made available to the United States Attorney for the Southern District of California.

Very truly yours,

Seal

A. T. Hobson (signed)
Secretary

Pursuant to T. 28 U. S. Code, Sec. 661, I certify this to be a true copy of the original record in this Department.

J. EDWARD WILLIAMS
Acting Head, Lands Division
Department of Justice [79]

EXHIBIT C

IRL D. BRETT

Special Assistant to

the Attorney General

808 Federal Building

Los Angeles 12, California

MAdison 7411, Ext. 221

Attorney for Plaintiff.

In the District Court of the United States
In and for the Southern District of California
Central Division

No. 2454-B Civil

United States of America, for the use of Reconstruction Finance Corporation, a Federal Corporation, acting in behalf of Defense Plant Corporation, a Federal Corporation, Plaintiff, vs. Certain Parcels of Land in the City of Los Angeles, County of Los Angeles, State of California; City of Los Angeles, a municipal corporation; County of Los Angeles, a body politic and corporate; State of California, a corporation sovereign; Associated Land Owners, Inc., a corporation, et al., Defendants.

INVENTORY OF THE PROPERTY AND EQUIPMENT REFERRED TO IN PARAGRAPHS XIII, XIV AND XV OF THE FIRST AMENDED COMPLAINT FILED HEREIN, AND WHICH IS TO BE ACQUIRED BY CONDEMNATION IN THE ABOVE ENTITLED ACION. [80]

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Union Oil Company of California

Inventory of Materials and Supplies Taken Over by
Defense Plant Corporation—September 29, 1942.

SAMARKAND OIL COMPANYSamarkand Well #1

<u>Quantity</u>	<u>Description</u>
1	Lot Misc. Junk pipe and fittings
1	128' Ideco Steel Derrick
1	Regan Crown Block
1	Rod Board
1	Radigan Carrier Bar
1	Radigan Horse Head
1	Wood Walk Beam
1	Pitman
1	Crank Complete w/con. bal. weights
1	Theolite Pump complete
1	Imperial Stuffing Box
1	3" Steel Tee
1	3" HP Steel Tee
2	3" Crane Malb. Tees
1	2 1/2" Crane Chuck Valve
1	3" Kew Union
1	3" Steel Bull Plug
1	1/2" Valve
1	1/2" Nipple
1	3" x 8" Nipple
1	3" x 17" Nipple
18'	3" Lead Line
1	3" HP Steel Union
1	3" Bull Plug
1	3" x 6" Nipple

<u>Quantity</u>	<u>Description</u>
1	2" Tee
1	2" x 3" Swedge
1	2" x 1" Bushing
1	2" Clip Gate
1	2" x 1 1/2" Bushing
1	1 1/2" x 3/4" Bushing
1	Wooden Band Wheel
1	12" x 95' Belt
1	Crank Shaft Base complete w/belt pulley
1	5' 6" Tex Rope Pulley
1	4 Cyc. Buda YR-425 w/7 Tex Rope Pulleys
4	Tex Ropes
1	3' 11" Belt Pulley
1	3" Ell
1	3" Kew Union
2	3" Clip Gates
3	3" Steel Tees
1	3" Ell
1	3" x 2" Bushing
1	3" C. L. Plug
1	2" x 4" Nipple
1	3" Tee
1	3" Bull Plug
1	3" x 6" Nipple
1	3" Crane 1600# Gate
2	3" x 8" Nipples
1	3" Tee
1	3" x 10" Nipple [82]

QuantityDescriptionSamarkan Well #1 (Continued)

2	3" Bolt H P Union
1	3" x 2' 8" Nipple
2	3" Tees
1	3" Darling 1600# Valve Gate
1	3" x 4" Nipple
1	3" x 6" Nipple
1	3" x 8" Nipple
13'	3" Line Pipe—Suction
10'	3" Line Pipe—Suction
20'	3" Line Pipe—Suction
10'	4" Line Pipe
1	3" Kew Union
2	3" x 6" Nipples
1	3" Clip Gate
1	3" Bull Plug
1	3" Gate ?
1	3" x 4" Nipple
1	3" Tee
1	3" Plug
1	3" x 2" Swedge
2	3" x 6" Nipples
1	2" H. P. Tee
1	2" Bull Plug
1	2" Ell
1	2" Tee
1	2" x 8" Nipple
1	2" Clo Nipple
1	2" Kew Union
1	2" x 24" Nipple
1	2" Ck. Valve

<u>Quantity</u>	<u>Description</u>
1	2" x 6" Nipple
1	2" Tee
1	2" Steel Bull Plug
2	2" x 10" Nipple
2	2" Ells
1	2" x 4" Nipple
1	3" x 6' Pipe
1	2" x 22' Pipe
1	2" Tee
1	2" Plug
1	2" Gate—in cellar
1	2" x 12" Nipple
1	2" x 10" Nipple
1	2" x 6" Nipple
3	2" Ells
3	2" Tees
4	2" Kew Unions
3	2" Clip Gates
1	2" Gate—in cellar
2	2" x 6" Nipples
1	2" x 4" Nipple
1	2" x 12" Nipple
23	2" Pipe
1	2" x 8" Nipple
8	2" Pipe
1	6 5/8" Landing Clamp
1	6 5/8" Nipple 3' long
1	H. P. Pump Head ? make
1	4" Drill Pipe Collar [83]

QuantityDescriptionSamarkand Well #1 Continued

1	4" x 2" Swedge
1	4" x 3" Swedge
1	4" x 10" Nipple
1	4" x 3" Nipple
1	4" Line Pipe Collar
1	3" Line Pipe Collar
1	3" Tee—oil line to Tanks
1	3" C. I. Plug
1	3" H. P. Union
1	3" Steel Bull Plug
1	2" Tee
1	2" Plug
1	3" Valve ? make
549'	3" Line Pipe (approx.)—mostly buried
4	3" Ells
3	3" Brass Valves—Tank Setting
3	3" Kew Unions
3	3" Tees
2	3" x 6" Nipples
1	3" x 12" Nipple
2	3" x 48" Nipples
1	3" Bull Plug
1	3 x 6 Swedge Nipple
1	1/2" Glo Valve
1	3" x 4" Swedge
2	4" Tees
1	3" x 6" Nipple
1	3" x 10" Nipple
1	3" x 12" Nipple
1	3" Tee

<u>Quantity</u>	<u>Description</u>
1	3" x 8" Nipple
1	3" Std. Union
1	4" C. I. Plug
1	4" x 16" Nipple
2	4" x 8' Nipples
1	4" Std. Flange Union
1	4" Ell
1	4" Crane Flg. Gate Valve 125#
1	4" x 6" Nipple
1	4" x 16" Nipple
3	4" Ells
1	4" x 28" Nipple
1	4" x 27" Nipple
1	Wilgus Gas Regulator
2	1/4" Valves
1	1/4" Ell
1	1/4" Union
1	1/4" Tee
3'	1/4" Pipe
2	1/4" x 6" Nipples
1	Trumble Gas Trap WM 276
126'	4" Line Pipe (Gas)
1	3" x 17" Nipple
1	3" Crane Gate 125#
1	3" x 4" Swedge 24" long
1	4" Fairbanks Ck. Valve
1	4" x 3" Bushing
1	3" x 4" Nipple
2	3" Kew Unions [84]

QuantityDescriptionSamarkand Well #1 (Continued)

78'	3" Line Pipe
2	3" Tees
2	3" Bull Plugs
8'	3" Pipe
1	6" x 13" Swedge
2	1" Valve
3	1/2" Valves
3	1/2" x 4" Nipples
4	1/2" Ells
47'	1/2" Pipe
1	1" Plug
2	1" Valves
1	1" Ell
1	1" Kew Union
1	6" x 2" Swedge
2	2" Kew Unions
3	2" Tees
1	2" Bull Plug
20'	2" Pipe
2	2" Clip Gates
1	2" x 6" Nipple
2	2" x 4" Nipples
1	2" x 1/2" Bushing
1	1/2" H. P. Valve
1	1/2" Ell
2	1/2" x 6" Nipples
1	2" x 6" Nipple
1	2" Kew Union
7'	2" Pipe
1	2" Tee

<u>Quantity</u>	<u>Description</u>
1	2" x 1" Bushing
1	1" Valve
3	2" Ells
5	2" Tees
2	2" Plugs
1	2" x 6" Nipple
1	2" Ell
2	2" Bull Plugs
1	2" Kew Union
1	2" x 6" Nipple
4	2" x 4" Nipples
1	2" Clip Gate
47'	2" Pipe
1	2" Valve
2	2" x 4" Nipples
2	2" Ck. Valve
2	2" 45 Ell
1	2" x 6" Nipple
2	2" Kew Unions
24'	2" Pipe
1	2" x 6" Nipple
1	2" Tee
1	2" Plug
2	2" Clip Gates
2	2" Kew Unions
30'	2" Pipe
2	2" x 4" Nipples
1	2" Kew Union
1	2" x 2" Nipple [85]

QuantityDescriptionSamarkand Well #1 (Continued)

1	2" Steel Bull Plug
1	2" Tee
1	2" x 8" Nipple
1	2" x 1" Bushing
1	1" x 1/2" Swedge
1	1/2" Kew Union
1	1/2" x 2" Nipple
1	1/2" Valve
75'	1/2" Pipe
32'	3" 8 th. Line Pipe
1	3" Kew Flg. Union
1	3" E. H. Malb. Tee
1	3" x 6" Nipple
1	3" x 1 1/4" Malb. Reducer
1	1 1/4" x 3" Nipple
1	1 1/4" x 1" Malb. Reducer
1	1" Std. Brass Gate Valve
130'	3" 8 th. Line Pipe
1	3" Std. Malb. St. Ell
1	3" E. H. Malb. Tee
1	3" x 4" Nipple
1	3" N. R. S. Gate Valve
2	3" x 12" Nipple
1	3" Std. Malb. Tee.
1	3" Bull Plug
1	3" x 4" Nipple
1	3" Rapid Tank Flange

<u>Quantity</u>	<u>Description</u>
1	3" R R Union
425'	3" Line Pipe 8 th.
1	3" Kew Union
1	3" x 12" Nipple
1	3" Clip Gate
1	3" x 10" Nipple
1	4" x 3" Forged Steel Cross
2	3" E. H. Hyd. N. R. S. Gate Valve
2	4" E. H. Hyd. N. R. S. Gate Valves
2	3" E. H. Steel Tees
2	4" x 3" Steel Bull Plugs
2	4" Shaffer Floor Beams
1	4" Hughes Gate Valve
200'	2" Line Pipe
1	2" R R Union
4	2" Ells
1	2" E. H. Brass Gate Valve
750'	12 3/4" Casing—Estimated
6400'	6 5/8" Casing—Estimated
250'	4 3/4" Liner—Estimated
	Sub surface equipment records not available September 29th, 1942.
6300'	2 1/2" Upset tubing—Approximately
2100'	7/8 x 30 Sucker Rods—Approximately
4200'	3/4 x 30 Sucker Rods—Approximately
1	Dbl. Ball Nielson Pump [86]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

SAMARKAND

<u>Quantity</u>	<u>Description</u>
1	Regan Crown
1	Regan 4 sheave travel block
1	850' Casing Line
1	Calf Wheel complete w/cat head, clutch and sprockets
1	Dehydrating Unit
1	Home made heater
2	6" Rapid Tank Flanges
4	6" x 6" Nipples
3	6" Std. Malb. Ells
2	6" x 10" Nipples
2	6" Std. Malb. Bull Plugs
3	6" Std. Malb. Tees
2	6" x 10" Nipples
8	6" Std. F. S. Comp. Flanges
100'	6" Line Pipe
1	3" x 10" Nipple
210'	5 9/16" connected drill pipe
1	6" Std. O S & Y Gate Valve
1	5" x 4" Swedge
1	4" x 8" Nipple
1	4" Kew Flg. Union
2	4" Std. Malb. Tees
1	4" Bull Plug
40'	4" 8 th. Line Pipe
3	4" Std. Malb. Ells
1	4" N. R. S. Gate Valve
1	4" G H Malb. Tee

<u>Quantity</u>	<u>Description</u>
1	4" x 4" Nipple
1	4" x 4" Nipple
2	4" x 12" Nipples
200'	3" Line Pipe
1	3" Std. N. R. S. Gate Valve
2	3" R R Union
1	3" Clip Gate
1	3" Kew Union
2	1500 Bbl. Double bolted 3 ring cone to tanks w/ stairway
52 Jts.	4 1/2" Drill Pipe w/tool jts.
48 Jts.	5 9/16" Drill Pipe w/tool jts.
1	8 5/8" Overshot w/wash pipe
1	24" Conductor Pipe
122 Jts.	4 1/2" Drill Pipe
176 Jts.	3 1/2" Drill Pipe
1	4 1/4" x 50' Kelly
1	4 1/4" x 30' Kelly
1	6 1/4" x 50' Kelly
2	5 9/16" Drill Collars (30')
1	4 1/2" Drill Collars (10') short
1	Shop made hoist "Emsco" w/1240 sprocket 9 3/4" break band
1	#3426 Draw works
1	4 1/2" Swivel tubing block
1	#12 Rotary machine
1	Emsco 2 sheave 24" tubing block
1	6" type "A" Swivel [87]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

Samarkand Continued

<u>Quantity</u>	<u>Description</u>
1	12 1/2" Solid Spider
1	Fordson motor mounted on 5 1/2" x 18"- x 1/2" I Beams shop made
1	2 1/2" 30' Rotary Hose
1	14' Single sheave snatch block
1	Nuttal Reduction Gear
1	Westinghouse Oil Well Motor 35-65 HP, Frame #7680, Style #489275, Serial #4839003-440 Volts
1	Westinghouse Oil Well Motor 35 HP, Frame 6620, Style 512097, Serial \$4788046, 440 Volts
2	2 1/2 Gal. Fire Ext.
1	Westinghouse Oil Well Motor 75 HP, Frame 752G, Style 512095, Serial \$ 4732197
1	Westinghouse Grid w/controller type "S" Frame 50 Style 515442, Control- ler type "S" Frame #50 Style #S- 019E604
1	Tool Box
1	15'3" x 17'6" Mud Tank

<u>Quantity</u>	<u>Description</u>
2	7¼ x 14 Power driven Gardner Denver pumps
1	Westinghouse Oil Well Motor 25-55 HP Frame 7620 Style 489275 Serial 482-4930—440 Volts
2	Westinghouse Grid w/Controller style "S" Frame #50 Style 515442
1	Panel Board 4 switches
1	Emsco Rotary Machine
1	5 sheave Regan 54" Casing Block
1	Shop made hoist w/6 cylinder motor
1	16-3/4" Fish tail bit
1	16-3/4" Fish tail bit
1	7 sheave high deck Regan Crown Mud end for 14-7¼ Gardner Denver Pump
1	12-3/4" Steel Drill Gate Valve
1	10" Steel Gate Valve
1	10" Flg. Steel Cross w/6" outlets
1	6" type G. S. Swivel
1	12' x 16' Corg. Iron Bldg. w/wood frame
1500'	1¼" Wire Line
6000'	9/16" Sand Line
2	Steel Cat wheels
1	Lot Misc. Junk [88]

Union Oil Company of California

Inventory of Materials and Supplies Taken Over by
Defense Plant Corporation—September 29, 1942.

TREASURER OIL COMPANY

2600 Washington Blvd., Venice, Calif.

<u>Quantity:</u>	<u>Description:</u>
	Treasurer Well #1
1	122' Emsco derrick w/ reinforcements
1	3 Sheave Pump Crown
1	Westinghouse Oil Well Motor 30-50 HP, Frame #7526, Style 489274, Serial 4717084
1	Grid w/ controller Westinghouse Style "S", Frame 40 Style So 19 D 227
1	Square D Safety Switch 20 HP, Cat. #463420
1	Trumball Switch Type A.G., 3 Pole, 50 HP, Cat. #575 AC
1	Lacy Pump Unit type OD60, Ser. #76
1	Manzel Tritolite Pump
164 Jts	2½" Upset 8 th. Tubing R-2 standing in derrick
6 Jts	2½" Upset 8 th. Tubing R-2 on rack
5 Jts	2½" Upset 8 th. Tubing R-1 on rack
9	¾" x 30 Rods
5	7/8" x 30 Rods
175	¾" x 30 Rods
67	7/8" x 30 Rods
150'	1" Gal. Conduit
3	14" Reflectors

<u>Quantity</u>	<u>Description</u>
6	½" Conduit outlets
1	1¼" Radgan Polish Rod
1	3" Oil Well Stuffing Box
1	1" x 6" Nipple
1	1" Std. Brass Gate Valve
1	1" Malb. St. Ell
1	1" x 12" Nipple
2	2½ Gal. Foamite Fire Ex.
25'	¼" Copper Tubing
4	¼" Copper Tubing Connections
1	3/8" R R Union
1	3/8" Brass Swing Ck. Valve
2	3/8" Brass Stop Cock
2	3/8" Malb. Ells
2	3/8" Malb. St. Ells
1	3/8" Malb. Tee
3	3/8" x 4" Nipples
4	½" Malb. Tee
1	½" 45° Ell
1	½" Malb. Ell
1	½" Std. Brass Gate Valve
2	1" x ½" Bushing
1	1" Malb. Tee
1	1" Std. Gate Valve
2	1" Malb. Ells
1	1" R R Union
1	1" Clip Gate
3	1" x 6" Nipples
20'	½" Blk. Pipe [89]

QuantityDescriptionTreasurer Well #1

1	1/2" Rld. Union
3	1/2" Std. Brass Gates
1	1/2" St. Ell
3	1/2" Std. Malb. Tees
1	1/2" Std. Malb. Union
1	1/2" Std. Angle Gate Valve
1	3/4" Clip Gate
2	1" Brass Gate Valves
1	3/4" Std. Brass Swing Ck. Valve
1	Master Motor 1/4 HP, type RA, Frame 5820, Serial MD 1144, Style 42540
1	3" Fg. Steel Cross
2	3" Hughes St. Gate Valves
1	3" Derling Hyd. Gate Valve
1	3" Shaffer Flow Beam
1	3" Jefferson Union
1	3" Std. Swing Ck. Valve
5	3" Std. Malb. Tees
1	3" Bull Plug taped 1/2"
1	3" x 4" Nipple
4	3" x 12" Nipples
1	3" Bull Plug
2	3" Clip Gates
2	3" x 6" Nipples
1	3" Kew Union
1	3" C. I. Plug
2	1/2" Std. Brass Gate
5'	3" 8 th. Line Pipe
1	2" E. H. Swing Ck. Valve
1	2" N.R.S. Gate Valve

<u>Quantity</u>	<u>Description</u>
2	2" E. H. Ells
2	2" E. H. Malb. Tees
1	2" Std. Brass Gate
4	2" x 6" Nipples
2	2" x 10" Nipples
1	2" x 4" Nipple
15'	2" Line Pipe
1	2" Std. Malb. Cross
1	2" Med. Brass Gate
1	2" Clip Gate
2	2" Malb. Ells
1	2" Rld. Union
3	2" x 4" Nipples
1	2" x 3" Nipple
3	2" x 8" Nipples
1	2" C. I. Plug
1	2½" x 2" Swedge
1	2½" Std. Malb. Ell
12'	2½" Line Pipe
1	3" x 3" Nipple
1	3" Rld. Union
2	3" x 18" Nipples
1	3" Clip Gate
1	3" E. H. Malb. Tee
50'	3" Line Pipe
2	3" N.R.S. Gates
1	3" Rld. Union
4	1" Std. Malb. Tee
10'	1" Line Pipe [90]

QuantityDescriptionTreasurer Well #1

60'	3" Line Pipe
50'	2½" Line Pipe
50'	1" Line Pipe
1	2" E. H. Malb. Tee
1	2" Std. Malb. Tee
1	1½" Std. Malb. Tee
1	1½" Rld. Union
1	1¼" Rld. Union
1	2" x 1¼" Bushing
1	2" x 1½" Bushing
1	G. E. Motor ½ HP, Model #29074, Frame 1455, Type R.S.A.
1	Cent. Pump 1½" Suction, 1¼" Dis- charge
1	2" Std. Brass Swing Ck. Valve
3	2" Std. Malb. Tees
1	2" Clip Gate
1	3" x 2" Swedge
2	2" x 6" Nipples
1	2" x 4" Nipple
5	3" Std. Malb. Tees
2	3" x 6" Nipples
1	3" x 8" Nipple
1	3" x 10" Nipple
1	3" x 12" Nipple
1	3" x 18" Nipple
1	3" x 4" Nipple
3	3" Clip Gates
1	3" Std. N.R.S. Gate
1	3" Med. N.R.S. Gate

<u>Quantity</u>	<u>Description</u>
1	3" Std. Bull Plug
2	1/2" Clip Gates
2	1/2" Malb. Ells
3	1/2" x 6" Malb. Ells
3	1/2" x 4" Malb. Ells
1	Trumble Gas Trap Model "E" w/ Slide Valve
6	3" Std. Malb. Tee
2	3" Std. N.R.S. Gates
1	3" O S & Y Gate
1	3" Std. Swing Ck. Valve
3	3" Crane Unions
2	3" Bull Plugs
2	3" C. I. Plugs
2	3" x 4" Nipples
2	3" x 6" Nipples
1	3" x 8" Nipple
1	2" Clip Gate
1	2" Std. Malb. Tee
2	2" Std. Malb. Ell
1	2" x 6" Nipple
1	2" x 8" Nipple
1	2" x 18" Nipple
1	2" Rld. Union
12'	2" Line Pipe
436'	3" Line Pipe
4	3" Std. Malb. Tees
2	3" E. H. Malb. Ells
4	3" C. I. Plugs
2	2" Std. Malb. Ells
125'	2" Line Pipe [91]

<u>Quantity</u>	<u>Description</u>
	<u>Treasurer Well #1</u>
190'	2" Line Pipe
750'	1" Line Pipe
345'	1½" Galv. Line Pipe
125'	3" Line
50'	2" Line
100'	2" Line
130'	6" Line
60'	2" Pipe
60'	6" Line
60'	2" Line Pipe
1	2" Clip Gate
52	50# sacks #2 salt
14 gals	Lubricating oil, S A E 30 Standard Zer- dene
37 gals (est.)	Dehydrating Comp. #675
9	Single tripper barrels
106 gals	Gaso. grade and brand unknown
32 gals (est.)	Lubricating Oil, Standard oil, SAE un- known
53 gals (est.)	Dehydrating Comp. #675
50'	½" Line
60'	¾" Line
1	¾" Std. Brass Gate Valve
1	1" Std. Brass Gate Valve
1	1" x ¾" Reducing Tee
35 gals (est.)	W-25 Tretolite
125'	2" Line ^c
165	2" Line
1	2" Upgate
750'	12-¾" Casing—Estimated

<u>Quantity</u>	<u>Description</u>
6400'	6-5/8" Casing—Estimated
250'	4-3/4" Liner—Estimated
	Sub surface equipment records not available September 29, 1942.
6300'	2½" Upset Tubing—Approximately
2100'	7/8" x 30' Sucker Rods—Approximately
4200'	3/4" x 30' Sucker Rods—Approximately
1	Dbl. Ball Nielson Pump [92]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

	<u>Treasure</u>
<u>Quantity</u>	<u>Description</u>
1	Emsco pulling machine w/ Pacific Gear s27c
1	Grid w/ Westinghouse controller Style "S", Frame #40, Style 8015B679
1	Westinghouse Oil Well Motor 25-65 HP, Style 7620, Serial #4670407
500'	1" Tubing Line
1	Shop Made Heater
2	1" Std. Brass Gates
1	1" Rld. Union
40'	1" Blk. Pipe
2	2" Malb. Tees
1	2" 45° Ell
2	2" Rld. Unions
1	2" Brass Swing Ck. Valve
1	2" Clip Gate
1	2" x 4" Nipple

<u>Quantity</u>	<u>Description</u>
2	2" x 6" Nipples
11	2" Clip Gates
8	2" Rld. Unions
4	2" x 6" Nipples
3	2" x 4" Nipples
5	2" x 8" Nipples
10	2" Std. Malb. Tees
11	2" Std. Malb. Ells
5	2" Rapid Tank flanges
2	3" Rapid Tank Flanges
4	2" x 6" Nipples
2	2" x 10" Nipples
2	2" x 12" Nipples
1	6" x 4" Swedge
1	6" Med. N. R. S. Gate
1	4" x 8" Nipple
3	1/2" Std. Brass Gates
1	750 Bbl. Bolted water sealed deck tank w/ steel stairs
1	2" Brass Stop Cock
1	2" Kew Union
1	2" x 1" Reducer
1	1" Std. Brass Gate
1	1" Union
1	1" Union
1	1" Ell
3	1" Tees
2	1" Clip Gates
1	1" Std. Brass Gate
2	1" x 6" Nipples
4	1" x 4" Nipples
1	6" Rapid Tank Flange

<u>Quantity</u>	<u>Description</u>
3	2" Rapid Tank Flanges
1	2 1/2" Rapid Tank Flange
1	3" Rapid Tank Flange
1	6" x 4" Swage
1	4" Med. N. R. S. Std. Gate Valve
1	4" x 8" Nipple
3	1/2" Std. Grass Gate Valves
3	2" Clip Gates [93]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

Treasure Continued

<u>Quantity</u>	<u>Description</u>
1	1" Clip Gate
1	1" Brass Stop Cock
4	2" x 6" Nipples
2	2" Std. Malb. Tees
1	2" R R Union
2	3" x 6" Nipples
2	3" Kew Unions
1	3" Std. N. R. S. Gate Valve
20'	6" line
1	3" x Hvy. Malb. Tee
1	3" Std. Malb. Tee
1	3" Bull Plug
1	3" Std. Malb. Ell
8	3" Std. Malb Tees
2	3" x 2" Swage Nipples
1	2" R. R. Union
3	2" Clip Gates

<u>Quantity</u>	<u>Description</u>
1	1" Clip Gate
2	3" Kew Unions
2	3" Std. Malb Ells
1	3" 45° Std. Malb. Ell
2	2" R R Unions
1	3" Clip Gate
1	3" Std. N. R. S. Scd. Gate Valve
1	3" R. R. Union
2	3" Std. Malb. Tees
1	3" Std. Malb Ell
1	3" x 2" Swage Nipple
6	3" x 6" Nipples
5	3" x 4" Nipples
2	2" R R Unions
1	2" Std. Malb Ell
1	2" Std. Malb Tee
12'	3" Line
1	3" Med. N. R. S. Gate Valve
1	3" Std. N. R. S. Gate Valve
3	3" R. R. Unions
2	3" Std. Malb Tees
3	3" x Hvy. Malb. Tees
3	3" x 4" Nipples
1	3" x 12" Nipples
2	3" x 8" Nipples
3	3" x 18" Nipples
1	3" x 4" Swage
1	4" x Hvy. Malb. Tee
1	Shop made water heater 24" CD x 12' (N. G.)
50'	1" Pipe

<u>Quantity</u>	<u>Description</u>
1	1000 bbl. welded steel tank w/cone to & steel stairway
1	2" Clip Gate
1	2" R R Union
2	2" Std. Mall Tees
2	2" x Hvy. Mall Ells
1	4" x 3" Bushing
1	4" R R Union [94]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

Treasure (continued)

<u>Quantity</u>	<u>Description</u>
1	4" Std. Mall Tee
1	4" Clip Gate
3	4" x 6" Nipples
1	4" x 4" Nipple
3	500 bbl. single bolted steel tanks w/ water sealed deck, 2 w/ steel ladders 1 w/ steel stairway
3	2" Clip Gates
3	2" Std. Mall Tees
3	2" Std. Mall Ells
3	2" x 6" Nipples
2	2" x 4" Nipples
5	2" rapid tank flanges
1	4" rapid tank flange
1	2" Clip Gate
1	2" R R Union
5	1/2" Std. Brass Gate Valves

<u>Quantity</u>	<u>Description</u>
1	1½" Std. Brass Glo Valve
1	2" Std. Brass Gate Valve
1	6" x 4" Swage Nipple
2	4" Std. N. R. S. Gate Valve
1	4" x 6" Nipple
1	4" x 8" Nipple
1	4" x 4" Nipple
1	4" Kew Union
2	4" Std. forged steel comp. flanges
40'	½" Pipe
20'	4" Line Pipe
1	4" 45° Std. Mall Tee
1	4" Kew Union
2	4" Std. N. R. S. Gate Valves
2	4" x 8" Nipples
32'	6" Line Pipe
28'	5" Line Pipe
1	6" Std. N. R. S. Flanged Gate Valve
2	6" Std. forged steel comp. flanges
1	4" Universal
1	3" quick opening valve
2	4" x 3" Swage
1	4" Std. Mall Tee
15'	4" Line Pipe
20'	2" Pipe
1	4" x Hvy. Mall Ell
1	4" Std. Mall Tee
1	4" x 6" Nipple
1	4" Bull Plug
2	4" x Hvy. forged steel comp. flanges
30'	6" Line
1	2" Clip Gate

<u>Quantity</u>	<u>Description</u>
1	2" x 12" Nipple
1	2" Std. Mall Tee
1	2" Std. Mall Ell
1	2" R R Union
60'	2" Line
50'	2½" Line
1	6" x 4" Swage
1	4" x Hvy. N. R. S. Gate Valve [95]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

Treasure (continued)

<u>Quantity</u>	<u>Description</u>
1	4" Std. Mall Tee
1	4" Bull Plug
1	4" Kew Union
1	4" x 4" Nipple
1	4" x 3" Nipple
3	½" Std. Brass Gate Valves
15'	½" Pipe
1	3" Kew Union
1	2" R R Union
1	3" Std. N. R. S. Gate Valve
1	3" x 10" Nipple
1	3" rapid tank flange
2	2" Clip Gates
2	2" R R Unions
1	2" Std. Mall Tee
4	2" Clip Gates
3	2" Std. Mall Ells

<u>Quantity</u>	<u>Description</u>
4	2" Std. Mall Tees
2	2" R R Unions
4	2" x 4" Nipples
4	2" x 6" Nipples
1	4½" x 2-3/4" x 4" Gardner Denver Duplex Steam Pump #21899
1	3 shive tubing block
1	7" Wigle Hook
1	7'6" x 7'6" x 21' cooling tower with two 2" coils and 21' 1½" pipe
1	5" BRIB 300# ammonia gauge
1	5" BRIB 150# ammonia gauge
1	American Ice Machine Compressor
1	3/8" Crane Hvy. steel needle point Gate Valve
1	3/8" Steel Edwards Needle Point Gate Valve
1	3/8" Vogl Steel Needle point Gate Valve
1	3/4" x Hvy. Steel Tee
1	3/4" x Hvy. Steel Ell
5'	1" Pipe
4'	3/4" Pipe
1	10 HP Westinghouse Motor 440 Volt #2620836
1	6" Six Groove "C" pulley
1	24" 4 groove split pulley

<u>Quantity</u>	<u>Description</u>
1	Centrifugal pump with 1¼" inlet and outlet
1	Oil container 4' x 6'6" x 2' with 2 ammonia coils complete w/ fittings
1	Surge Chamber 10" OD—10' long, two 2" x 4" nipples and one 2½" collar welded on.
1	Ammonia receiver 12-3/4" OD, 46½" long, welded heads, complete w/ fittings
70'	3" Pipe
120'	2" Pipe
120'	2" Pipe
1	2" Clip Gate
2	2" Mall Ells
1	2" Mall Tee
20'	3" Pipe
50'	2½" Pipe
70'	2" Pipe
1	2" Mall Tee [96]

Items Deleted from Original Inventory as Indicated
as Not Being Needed in Playa Del Rey Project

Treasure (continued)

<u>Quantity</u>	<u>Description</u>
1	2" Mall Ell
50'	2" Pipe
1*	2" Std. Mall Cross
1	2" R R Union
1	2" x 1" Reducer
2	3" x Hvy. Mall Ells
2	3" Std. Mall Ells
1	3" x Hvy. 45° Mall Ells
1	3" Std. 45° Mall Ells
2	3" Std. Mall Tees
1	3" Kew Union
4	3" x 3" Nipples
2	3" x 6" Nipples
1	3" close nipple
5	3" Line Pipe Couplings
1	3" Block Bull Plug
21'	3" Line
1	Steel Std. end complete w/ jack post, sampson post, headache post
1	12' steel band wheel, 6" shaft & wood cant rim w/ band wheel clutch sprocket
1	Frame ^c for Std. engine with 14" x 20" pulley and fly wheel w/ balanced rim & 7" band for belt.
1	14" x 30" x 26' wood beam

<u>Quantity</u>	<u>Description</u>
1	Junk 500 bbl. steel bolted tank
1	Steel Pitman with 2½" stirrup
1	Building 8' x 16 Galv. Corrugated iron with wood frame and floor
1	2 ring stl. bolted tank 1000 bbl. (?) w/ ladder on Calabar on lot 42 and block 30
2	2" N. R. S. Gate Valve
4	2" x close nipples
2	3" x 2" Red. Unions
30'	¾" Pipe
2	¾" Gate Valve
2	¾" Ells
1	1" x ¾" Unions
1	¾" x 4" Nipple
1	6" Ell
1	6" N. R. S. Gate
2	6" x 8" Nipples
1	6" Kew Union
1*	2" Mall Ell [97]

[Verified.]

Receipt of copy of the within petition for injunction is acknowledged this 25th day of March, 1946. Bodkin, Breslin & Luddy, Attorney for Defendant Samarkand Oil Company; Bodkin, Breslin & Luddy, Attorney for Defendant Treasure Company.

[Endorsed]: Filed Mar. 26, 1946. [98]

[Title of District Court and Cause]

NOTICE OF MOTION FOR INJUNCTION AND
RESTRAINING ORDER IN AID OF COM-
PLAINT IN CONDEMNATION

To the Defendants: Treasure Company, a corporation,
and to Bodkin, Breslin and Luddy, its attorneys;
Samarkand Oil Company, a corporation, and to Bod-
kin, Breslin and Luddy, its attorneys.

You, and Each of You will please take notice that on
the 8th day of April, 1946 at the hour of ten o'clock A. M.,
or as soon thereafter as counsel can be heard, the plaintiff
will move the above entitled Court in the courtroom of
the Honorable C. E. Beaumont in the Federal Building
at Los Angeles, California, for an injunction and re-
straining order restraining you, and each of you, from
proceeding further in each of those four certain actions
now pending in the Superior Court of the State of Cali-
fornia in and for the County of Los Angeles entitled re-
spectively: "Treasure Company, a corporation, vs. Union
Oil Company of California, a corporation," No. 505,967;
"Samarkand Oil Company, a corporation, vs. [99] Union
Oil Company of California, a corporation," No. 505,968;
"Treasure Company, a corporation, vs. Union Oil Com-
pany of California, a corporation," No. 507,385; "Sam-
arkand Oil Company, a corporation, vs. Union Oil Com-
pany of California, a corporation," No. 507,386, or from
doing or attempting to do any act in either or any of
said actions tending to fix or determine your rights, or the
rights of any of you, with respect to any of the property
described in either or any of said actions, or fixing or at-
tempting to fix the rights or liability of the United States

of America, Reconstruction Finance Corporation, a federal corporation, or any of its agencies or agents, or of the Union Oil Company of California, a corporation, in connection with, resulting from or growing out of the entry upon, the taking possession of, the continued possession of, or the condemnation of any of the property described in either or any of the aforesaid actions, save and except by such proceedings in the above entitled court as are provided for by its rules of practice or by the statutes in such case made and provided; and plaintiff will further move for such other and further or different relief in the premises as the nature of the case may require and as to the Court may seem *metc*, just and equitable.

Said motion will be made upon all of the files and records of the above entitled Court in the above entitled proceeding, and upon plaintiff's Petition verified the 11th day of February, 1946, and plaintiff's Points and Authorities, copies of which Petition and Points and Authorities are herewith annexed and served upon you.

Dated: This 11th day of February, 1946.

EUGENE D. WILLIAMS

Special Assistant to the Attorney General

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney, Lands Division,
Department of Justice

By Eugene D. Williams

Attorneys for Plaintiff

Receipt of copy of the within Notice of Motion for Injunction and Restraining Order in Aid of Complaint in Condemnation is acknowledged this 25th day of March, 1946. Bodkin, Breslin & Luddy, Attorneys for Defendant Samarkand Oil Company; Bodkin, Breslin & Luddy, Attorneys for Defendant Treasure Company.

[Endorsed]: Filed May 26, 1946. [100]

[Title of District Court and Cause]

ANSWER OF TREASURE COMPANY, A CORPORATION,
AND SAMARKAND OIL COMPANY, A CORPORATION,
TO PETITION FOR INJUNCTION

Now come Treasure Company, a corporation, and Samarkand Oil Company, a corporation, and answering the Petition of plaintiff herein, for themselves and not for their co-defendants, admit, deny and allege as follows, to wit:

I.

Admit the allegations contained in Paragraph I of said Petition. Allege that such resolution, Exhibit "A", is the only resolution adopted by Reconstruction Finance Corporation prior to the institution of the present action and allege that by said resolution the directors of Reconstruction Finance Corporation did not determine the necessity of the taking or acquiring title to said real or [101] personal property described in said Petition, and Exhibits attached thereto, and insofar as the necessity of the taking of the real property is concerned said directors of Re-

construction Finance Corporation acted upon the resolution of Defense Plant Corporation, contrary to the authority granted to the directors of Reconstruction Finance Corporation, by Executive Order No. 9217, which specifically grants to Reconstruction Finance Corporation the discretion to determine whether it is necessary to take property by condemnation.

II.

Admit the allegations contained in Paragraph II of said petition. In this regard defendants allege that the resolution of September 18, 1942 authorized only the condemnation of real property. That the original complaint which is hereby by reference made a part hereof described only real property. That the order granting immediate possession, granted immediately upon filing the said action, which order is by reference hereby incorporated and made a part hereof, described only real property. That any designation of Union Oil Company of California to possess or care for personal property was void and of no force and effect, for the reason that no suit to condemn personal property was authorized or had been instituted and plaintiff was not entitled to take possession of such personal property at said time.

III.

Admit the allegations contained in Paragraph III of said petition. That the order of taking was made by Honorable C. E. Beaumont, Judge of the above-entitled Court, based upon said declaration of taking, which order of taking is hereby by reference incorporated herein and made a part hereof. That said declaration of taking and order of taking, described only real property, and [102] none of the personal property involved in the State actions,

sought to be restrained, was included in said declaration of taking or in said order of taking.

IV.

Deny the allegations contained in Paragraph IV of said petition, save and except that defendants admit that the Amendatory Resolution, a part of Exhibit "B" attached to said petition, was in fact adopted by Reconstruction Finance Corporation and that a letter, a copy of which is a part of said Exhibit "B" was in fact sent to the Attorney General; allege that said Amendatory Resolution was the only Resolution adopted authorizing the filing of said amended condemnation action or the taking of said personal property by condemnation.

Allege that on or about September 28, 1942, Union Oil Company of California, a corporation, without lawful authority and without right, took possession of the personal property described in Exhibit "B" attached to the petition, together with certain additional property belonging to these answering defendants; that at the time said Union Oil Company of California, a corporation, took possession of said personal property no resolution had been adopted by Reconstruction Finance Corporation authorizing the condemnation of said personal property nor the taking of possession of said personal property or any part thereof and that neither petitioner herein or Union Oil Company of California, a corporation, had any lawful right whatever to take possession of said personal property or any part thereof.

Allege that notwithstanding the demand of these answering defendants upon Union Oil Company of California, a corporation, demanding the return of said personal property, Union Oil Company of California, a

corporation, has at all times refused to return same or any part thereof to these answering defendants; that [103] plaintiff herein had no lawful right to take possession of or to manage or operate or control or to take into possession any part of said personal property and that if Defense Plant Corporation or petitioner did in fact attempt to authorize Union Oil Company of California, a corporation, to take possession of said personal property or any part thereof, they acted without authority and in excess of their lawful rights.

V.

Admit the allegations contained in Paragraph V of said petition. Allege that said amended complaint was the first and only complaint filed to condemn the personal property and that until said action was filed, petitioner had no lawful right to take, hold or detain any part of said personal property and any taking prior thereto by Union Oil Company of California or by petitioner was in fact unlawful. Allege that the inventory, Exhibit "C" attached to said petition, is a copy of the inventory attached to said Amendatory Resolution, Exhibit "B", and that said inventory at the time it was attached to said Exhibit "B", had the same headings which now appear in it, as to the property intended to be taken, to wit, "Union Oil Company of California Inventory of Materials and Supplies Taken Over by Defense Plant Corporation—September 29, 1942," and as to the property not deemed necessary to be taken, the same was listed under the following heading, "Items Deleted from Original Inventory as Indicated as Not Being Needed in Playa Del Rey Project."

VI.

Admit the allegations contained in Paragraph VI of said petition. That said answer of Samarkand Oil Company, a corporation, to said amended complaint is hereby, by reference, incorporated [104] herein and made a part hereof.

VII.

Admit the allegations contained in Paragraph VII of said petition. That said answer of Treasure Company, a corporation, to said amended complaint is hereby, by reference, incorporated herein and made a part hereof.

VIII.

Deny the allegations contained in Paragraph VIII of said petition, and in this regard allege that certain portions of said answers to plaintiff's amended complaint have been stricken on petitioner's motion and that said defendants have been granted permission to file amended defenses as to such portions of the answers stricken.

IX.

Admit that Samarkand Oil Company, a corporation, filed action number 505-968, in the Superior Court of the State of California, in and for the County of Los Angeles, for the recovery of a portion of said personal property described in said inventory, or for its value, and for damages for its withholding, but allege that as to a portion of said property described in said inventory, said Samarkand Oil Company, a corporation, has recovered judgment for its unlawful taking^c and withholding and that said judgment has been wholly satisfied. That petitioner Reconstruction Finance Corporation was a party to said action and was bound by said judgment. Allege that in

the above entitled action, if it is determined that said personal property has been lawfully taken, that defendant's sole recovery can be for the reasonable value of said personal property, at the time it was taken, on or after January 12, 1944, and that the above entitled Court cannot determine the issue as to whether said property was unlawfully taken by Union Oil Company of California, a corporation, [105] on September 28, 1942, the value of the property at said time or the damages suffered by reason of the unlawful withholding of said personal property by Union Oil Company of California, a corporation, thereafter. That the issue of whether Union Oil Company of California, a corporation, took said property is not involved in the above entitled action.

Deny that defendants knew that the possession, on September 28, 1942, was by way of condemnation, but allege it was unlawful and before any condemnation suit regarding said personal property had been authorized or filed.

X.

Admit that on September 27, 1945 defendant Treasure Company, a corporation, filed action number 505-967, in the Superior Court of the State of California, in and for the County of Los Angeles, for the recovery of the possession of a part of the personal property described in said inventory and for damages for its withholding, but allege that as to a portion of said property described in said inventory, said Treasure Company, a corporation, has recovered judgment for its unlawful taking and withholding and that said judgment has been wholly satisfied. That petitioner Reconstruction Finance Corporation was a party to said action and was bound by said judgment. Allege that in the above entitled action, if it is determined that

said personal property has been lawfully taken, that defendant's sole recovery can be for the reasonable value of said personal property, at the time it was taken, on or after January 12, 1944, and that the above entitled Court cannot determine the issue as to whether said property was unlawfully taken by Union Oil Company of California, a corporation, on September 28, 1942, the value of the property at said time or the damages suffered by reason of the unlawful withholding of said personal property by Union Oil Company of California, a corporation, [106] thereafter. That the issue of whether Union Oil Company of California, a corporation, took said property is not involved in the above entitled action.

Deny that defendants knew that the possession, on September 28, 1942, was by way of condemnation, but allege it was unlawful and before any condemnation suit regarding said property had been authorized or filed.

XI.

Admit that defendant Samarkand Oil Company, a corporation, filed action number 507-386, in the Superior Court of the State of California, in and for the County of Los Angeles, for wrongful production and removal of oil and gas. Allege in this regard that said defendant filed said action to prevent said cause of action becoming outlawed, in the event that the above entitled Court finds in its favor on the issues raised in the above entitled action. That said defendant has not set said case for trial and does not intend to set said case for trial, unless and until the above-entitled Court finds that the plaintiff is not entitled to condemn said real property described in the amended complaint.

XII.

Admit that defendant Treasure Company, a corporation, filed action number 507-385, in the Superior Court of the State of California, in and for the County of Los Angeles, for wrongful production and removal of oil and gas. Allege in this regard that said defendant filed said action to prevent said cause of action becoming outlawed, in the event that the above entitled Court finds in its favor on the issues raised in the above entitled action. That said defendant has not set said case for trial and does not [107] intend to set said case for trial, unless and until the above entitled Court finds that the plaintiff is not entitled to condemn said real property described in the amended complaint.

XIII.

Deny the allegations contained in Paragraph XIII of said petition, save and except that defendants admit that the personal property the subject matter of the actions described in Paragraphs IX, X, XI and XII, is a part of the property sought to be condemned by said amended complaint filed January 12, 1944, but which was unlawfully taken by Union Oil Company of California, on September 28, 1942.

XIV.

Deny the allegations contained in Paragraph XIV of said petition. Allege in this regard that Defense Plant Corporation, Reconstruction Finance Corporation, and petitioner, at all times claimed to be the real parties in interest, and that Union Oil Company of California, a corporation, was the agent of petitioner in taking possession of and retaining said property, and defendants well knew said contention, but in this regard allege that peti-

tioner had not sought to condemn said personal property at the time it was taken and retained, and that Union Oil Company of California illegally took possession of and retained said personal property, on September 28, 1942, and that defendants have a cause of action against Union Oil Company of California, a corporation, by reason thereof.

XV.

Deny the allegations contained in Paragraph XV of said petition and allege that when Union Oil Company of California, a corporation, claiming to be the agent of petitioner, took possession of said personal property, on September 28, 1942, neither petitioner [108] or said Union Oil Company of California, a corporation, had any lawful right to do so, and said act was in direct violation of the rights of defendants herein.

XVI.

Deny the allegations contained in Paragraph XVI of said petition.

XVII.

Deny the allegations contained in Paragraph XVII of said petition.

XVIII.

Deny the allegations contained in Paragraph XVIII of said petition and in particular allege that the act of Union Oil Company of California, a corporation, was in fact unlawful, in taking possession of and retaining said personal property, without lawful authority, and that the contract between Defense Plant Corporation and Union Oil Company of California, a corporation, does not re-

quire Defense Plant Corporation or Reconstruction Finance Corporation to save or hold harmless said Union Oil Company of California, a corporation, for its unlawful acts.

And for a First Separate Defense to Said Petition, These Defendants Allege as Follows, to wit:

I.

The first amended complaint was filed in the above entitled action, seeking to condemn the personal property pursuant to resolution of Reconstruction Finance Corporation, dated October 4, 1943, and the measure of damages for the taking is the value of [109] the property at the time that said personal property's condemnation was first sought, to wit, January 12, 1944. Allege further that under the statute described in plaintiff's petition, as well as in the Executive Order, Reconstruction Finance Corporation only has authority to condemn such personal property as is "located thereon or used therewith that shall be deemed necessary, for military, naval, or other war purposes," and it appears from Exhibit "B", particularly pages 103, 104, 109, 110, 111, 112 and 113 that the personal property described therein are "Items deleted from original inventory as indicated as not being needed in Playa Del Rey Project." That this Court is without jurisdiction to award damages against plaintiff in the present action for the taking of such property, which does not come within the purview of the statute, and that these answering defendants have a right to pursue the Superior Court actions for the purpose of recovering damages for the taking of such personal property admittedly unlawfully taken.

And for a Second Separate Defense to Said Petition, These Defendants Deny and Allege as Follows, to wit:

I.

Deny that the property described in said Superior Court actions is a portion of the property condemned in the above entitled action but allege in this regard that none of said personal property has been condemned and at the present time petitioner herein is seeking to condemn so much of said personal property as is "located thereon or used therewith that shall be deemed necessary, for military, naval, or other war purposes," and that said personal property was taken and possessed by Union Oil Company of California, a corporation, wrongfully and without lawful authority and its taking and possession by Union Oil Company of California is not the taking [110] and possession by United States of America, because there is no lawful authority for any petitioner herein to take any of said personal property prior to the filing of the first amended complaint herein, or at any time, for the taking or possession of any part of said personal property not "located thereon or used therewith that shall be deemed necessary, for military, naval, or other war purposes."

And for a Third Separate Defense to Said Petition, These Defendants Allege as Follows, to wit:

I.

That heretofore, to wit, on or about March 10, 1945, petitioner herein sought to enjoin the trial of actions then instituted and pending in the Superior Court of the State of California, in and for the County of Los Angeles, wherein defendants herein sought to recover in claim and delivery actions against Union Oil Company of California,

a corporation, for the unlawful taking of certain personal property, being oil well equipment situated at and on the leases described in the above entitled case; that said actions were numbered 489-318 and 489-319 in said court; that said motion was based upon the contention now made that the above entitled Court had sole and exclusive jurisdiction as to the personal property involved in said actions and in the actions now sought to be restrained and that the said Superior Court did not have jurisdiction to try or determine said actions. That defendants herein filed an answer to said Petition and motion for an injunction and said motion came on regularly for hearing before Honorable Paul J. McCormick, Judge of the above entitled Court, on or about the 26th day of March, 1945; that at said time said Court had jurisdiction of the parties thereto, being the same parties in the present proceeding, and the issues then presented were the same as [111] are now presented, to wit, did said Superior Court have jurisdiction to try the aforesaid actions for claim and delivery as to personal property and whether the above entitled Court had sole and exclusive jurisdiction to try said issues; that said issues were presented to the said Court and thereafter, on the 12th day of June, 1945, the above entitled Court, by decision of the Honorable Paul J. McCormick, decided each and all of said issues in favor of the defendants herein and against petitioner herein and then and there determined that said Superior Court did have jurisdiction to try said causes and that the above entitled Court did not have sole and exclusive jurisdiction to try the above entitled causes; that the aforesaid Notice of motion for injunction, the petition for injunction upon which said notice of motion was based, the answer to said petition and the aforesaid decision of the Honorable Paul

J. McCormick are hereby, by reference, incorporated herein, and hereby made a part hereof; that an appeal was taken from said decision but thereafter said appeal was dismissed and said decision is now final and conclusive and forever determines the fact that the Superior Court of the State of California, in and for the County of Los Angeles, does have jurisdiction to try such claim and delivery actions and that the above entitled Court does not have sole and exclusive jurisdiction thereof.

And for a Fourth Separate Defense to Said Petition, These Defendants Allege as Follows, to wit:

I.

That heretofore defendants herein instituted actions numbered 489-318 and 489-319, in said Superior Court, as plaintiffs, as against Union Oil Company of California, a corporation, as defendant, seeking to recover certain personal property described therein and for damages for withholding of same by Union Oil Company of California, [112] a corporation. That thereafter Defense Plant Corporation intervened in said actions on behalf of Union Oil Company of California, a corporation; that thereafter said causes of action were tried before the Honorable William J. Palmer, Judge of said Superior Court, and thereafter findings of fact and conclusions of law and judgment were rendered in said action in favor of defendants herein and against Union Oil Company of California, a corporation, holding substantially to the effect that Union Oil Company of California, a corporation, and Defense Plant Corporation had unlawfully taken possession of certain personal property, being a portion of the property described in Exhibit "C" attached to the Petition herein, and that defendants herein were entitled to damages therefor.

II.

That prior to the trial of said action Reconstruction Finance Corporation had succeeded to all of the rights of Defense Plant Corporation and subject to all of its liabilities, and said Reconstruction Finance Corporation was substituted as intervener in said action in the place and stead of Defense Plant Corporation prior to the rendition of said Judgment. That said judgment rendered in said action is binding and effective upon Reconstruction Finance Corporation, the real party in interest in the above entitled action.

III.

That the aforesaid judgment rendered by the Honorable William J. Palmer is final and conclusive, no appeal having been taken therefrom, and that said Judgment finally and conclusively determines that the taking of the personal property described in Exhibit "C" attached to the Petition herein was in fact unlawful and that Union Oil Company of California, a corporation, was liable for such unlawful taking. [113]

Wherefore these defendants pray that the injunction be denied and that defendants have such relief as is proper.

BODKIN, BRESLIN & LUDDY

By Henry G. Bodkin

Attorneys for Defendants Treasure Company,
a corporation, Samarkand Oil Company, a corp.

(Vertified by G. de Bretteville.)

Received copy of the within this 30 day of March,
1946. Lands Division, Dept. of Justice. A. W. Weymann,
by M. Koppenhaver, Attorney for

[Endorsed]: Filed Mar. 30, 1946. [114]

[RESPONDENT TREASURE CO. EXHIBIT A]

Bodkin, Breslin & Luddy
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1225 Citizens National Bank Bldg.
453 South Spring Street
Los Angeles 13, California
MUtual 3151
Attorneys for Plaintiff

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 489 318

Treasure Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant. Reconstruction Finance Corporation, a federal corporation, successor in interest to Defense Plant Corporation, a federal corporation, Complainant in Intervention.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Said case came on regularly for trial in Department 29 of the above entitled court, the Honorable William J. Palmer, Judge presiding, and was consolidated for trial with case No. 489319 in said court entitled Samarkand Oil Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant, Reconstruction Finance Corporation, a Federal corpora- [115] tion, successor in interest to Defense Plant Corporation, a Federal corporation, Intervener, by stipulation of all of the parties to said cases.

Defense Plant Corporation, a Federal corporation, was prior to said 11th day of September, 1945 by order of this

court granted leave to intervene in said action and its complaint in intervention was filed herein. It appearing to the court that by act of Congress of the United States, Defense Plant Corporation, Intervenor herein, had been dissolved and that Reconstruction Finance Corporation had succeeded to all its assets and liabilities, upon stipulation of counsel for the respective parties, Reconstruction Finance Corporation was substituted as intervenor in the place and stead of Defense Plant Corporation.

Said cases duly came on for trial on the said 11th day of September, 1945 and were tried without a jury on the 11th, 12th, 13th, 19th, 20th, 21st, 24th, 25th, 26th and 27th days of September and on the 1st, 2nd, 3rd, 4th, 9th and 18th days of October, all in 1945, and on said last date was submitted to the court. Messrs. Henry G. Bodkin, and E. E. Hitchcock of the firm of Bodkin, Breslin & Luddy appeared on behalf of plaintiffs, and Messrs. Jacob J. Lieberman and Aaron Elmore of the firm of Benjamin, Lieberman and Elmore, and Messrs. J. F. McPherson and August Weyman, Deputy United States Attorney General, appeared in behalf of defendant and intervenor. Prior to the commencement of trial on September 11, 1945 the United States of America through its attorney, Eugene D. Williams, assistant to the Attorney General, appeared specially and solely and only for the purpose of suggesting and did suggest to this court that this court was without jurisdiction to proceed with an adjudication of these actions and that the United States of America, whom he stated was the real party in interest, did not consent to be made a party to this action and was not amenable to the jurisdiction of the above-entitled court. [116]

Motions to abate these actions and for a judgment in favor of the defendant and intervenor and for non-suit having been denied in each case and evidence both written and oral having been introduced and considered by the court, and said cases having been submitted to the court after arguments of counsel, and the court having been fully advised in the premises, the following findings of fact and conclusions of law constituting the decision of the court in said actions are hereby made.

FINDINGS OF FACT

I.

At all times mentioned in the complaint, the plaintiff Treasure Company, a corporation, was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

At all times mentioned in the complaint the defendant Union Oil Company of California, a corporation, was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California.

III.

At all times mentioned in the complaint and until the 1st day of July, 1945 the complainant in intervention, Defense Plant Corporation, a federal corporation, was a federal corporation duly organized and existing under and by virtue of the laws of the United States of America.

IV.

On the 1st day of July, 1945, the said complainant in intervention, Defense Plant Corporation, a federal corporation, was dissolved by act of Congress and ceased to

exist, and thereupon Reconstruction Finance Corporation, a federal corporation, by said act of Congress became and was successor in interest to the said [117] Defense Plant Corporation, a federal corporation, and did assume all its obligations, and was by order of court, pursuant to stipulation, at the commencement of this trial, substituted as the party complainant in intervention in the place of the said Defense Plant Corporation, a federal corporation.

V.

At all times herein mentioned the said complainant in intervention, Reconstruction Finance Corporation, a federal corporation, was, and now is, a federal corporation, duly organized and existing under and by virtue of the laws of the United States of America.

VI.

On September 28, 1942 and for a long time prior thereto the plaintiff Treasure Company, a corporation, was the owner of, in possession of, and entitled to the immediate possession of, and after September 28, 1942 and until January 12, 1944 the said plaintiff was the owner of, and entitled to the immediate possession of, certain personal property hereinafter in these findings more particularly described and consisting of oil drilling tools and equipment not attached to real property and located upon Block 33 of Tract 9809 in the County of Los Angeles, State of California, as per map of said tract recorded in Book 145 of Maps at pages 91-96 inclusive in the office of the County Recorder of said County and State.

VII.

On the said 28th day of September, 1942 at and on said Block 33 of Tract 9809 in said County of Los Angeles, State of California, without the plaintiff's consent and

against its will, a Deputy United States Marshal, without any authorization from any source, without process of court related to said personal property and without direction from any agency of the United States Government falsely and wrongfully and willfully assumed dominion over the said personal property, and wrongfully and willfully took possession thereof and wrongfully delivered said personal property to the defendant, Union Oil Company of California, a corporation, which said [118] defendant on said date and at said place without right or authority wrongfully and willfully took possession of said personal property and thereafter continuously and until January 12, 1944 wrongfully and willfully held possession thereof and detained the same and wrongfully prevented the plaintiff Treasure Company, a corporation, from taking possession thereof.

VIII.

Between the 28th day of September, 1942 and the 12th day of January, 1944 the plaintiff Treasure Company, a corporation, on several occasions and particularly on September 30, 1942 and during the month of October and November of 1942 and during the month of April, 1943, demanded the return of said personal property but at all times the said defendant Union Oil Company of California, a corporation, wrongfully refused and continued wrongfully to refuse to deliver possession of said personal property to the said plaintiff until January 12, 1944.

c IX.

On said 28th day of September, 1945 the fair reasonable market value of said personal property was the sum of \$4,496.15.

X.

By order of court during the trial of this action the complaint herein of the Treasure Company, a corporation, in Action No. 489318 was amended so that each item therein described was given an item number. The item numbers and descriptions of each of said items of personal property taken and detained by said Deputy United States Marshal and by the said Union Oil Company of California, a corporation, as aforesaid, together with the fair reasonable market value of each item as of September 28, 1942 are as follows, to-wit: [119]

Item	Value
1. One galvanized corrugated 9'x9' steel tank	\$ 110.00
2. One complete steel standard end with 12 foot band wheel	1,650.00
3. 6639.25 feet of 6.5 lb. seamless external upset steel tubing	2,343.65
4. 7560 feet of $\frac{3}{4}$ " and $\frac{7}{8}$ " steel sucker rods with couplings	192.50
5. One furnished peaked roof corrugated iron portable office building, mounted on 2 18 ft. 8 in. x 8 in. pine timbers skids	200.00
Total	\$4,496.16

XI.

The reasonable rental value of the said personal property hereinabove described from September 28, 1942 to January 12, 1944 was \$1,700.00.

With Respect to the Answer of the Defendant Union Oil Company of California, a Corporation, Except Inso-

far as the Above Findings May Apply Thereto the Court Finds as Follows

XII.

With respect to the second separate and distinct defense of said answer, the court finds that it is not true that on or about September 29, 1942, or at any time prior to January 12, 1944, the United States of America, for the use of Reconstruction Finance Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation, or otherwise appropriated or took possession of the personal property hereinabove described, or any part thereof, under claim of eminent domain for use in connection with the establishment of a reservoir for the injection, storage, conservation or withdrawal of natural gas or incidental purposes or for use in the operation of oil or gas wells or in the treating, storing or disposing of the products thereof, or that it [120] thereupon delivered said personal property or any part thereof to the defendant Union Oil Company of California, a corporation, for such uses or purposes or any of them on behalf of the Defense Plant Corporation, a federal corporation. It is not true that the said United States of America ever took possession of said personal property or any part thereof or enjoyed any lawful right to the possession of all or any part thereof, until January 12, 1944.

XIII.

With respect to Paragraph II of said second separate and distinct defense the court finds that no lawful appropriation of personal property was made at the request of the assistant secretary of the Reconstruction Finance Corporation, an agency of the United States or under

direction of the Attorney General of the United States, or otherwise on September 28, 1942 or at any time prior to January 12, 1944. The court further finds with respect to said Paragraph II that it is not true that the defendant Union Oil Company of California, a corporation, in its acceptance, retention or use of said personal property or any part thereof, prior to January 12, 1944 was at all times, or at any time, acting on behalf of the United States of America for the use of Reconstruction Finance Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation.

XIV.

With respect to the third separate and distinct defense contained in the said answer of the defendant Union Oil Company of California, a corporation, the court finds that it was not true that at any time prior to January 12, 1944 there was pending in the United States District Court, Southern District of California Central Division, an action in condemnation numbered 2454-B Civil in which the said personal property hereinabove described or any part thereof was sought to be appropriated or condemned by the United States of America for the use of Reconstruction Finance [121] Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation, or that the plaintiff herein, Treasure Company, a corporation, was in any such action prior to January 12, 1944 offered or tendered reasonable or any compensation for the taking or detention of said personal property or any part thereof, or that any such compensation was offered or tendered to the person or persons or concerns or corporations lawfully entitled thereto.

XV.

With respect to the said third separate and distinct defense contained in the answer of the defendant Union Oil Company of California, a corporation, the court finds that Action No. 2454-B Civil was commenced September 28, 1942, in the United States District Court, Southern District of California, Central Division, and said action is now, and at all times since September 28, 1942 has been, pending in said court. Said action when filed did not relate to, and at no time until January 12, 1944 did it relate to the personal property hereinabove described, or any part thereof. Said action was on September 28, 1942 and at all times until January 12, 1944, an action in condemnation of real property only, including, amongst other parcels of land, said Block 33, Tract 9809 in the County of Los Angeles, State of California, as per map of said tract recorded in Book 145 of Maps at pages 91-96 inclusive, Records of said County. Said action was brought by the United States of America, for the use of Reconstruction Finance Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation, and the public use for which said real property was sought to be taken was the establishment of a reservoir for the storing and conservation of natural gas.

Neither the United States of America, the said Reconstruction Finance Corporation, a federal corporation, nor Defense Plant Corporation, a federal corporation, at any time prior to October 4, 1943, intended to take said personal property, or any part thereof, in or by reason of said condemnation action, nor did they, or any of them, institute any action to condemn all or any of said personal property until January 12, 1944. [122]

With Respect to the Complaint in Intervention of Defense Plant Corporation, A Federal Corporation, Except as the Above Findings May Apply Thereto, the Court Finds as Follows:

XVI.

With respect to the separate second and distinct defense contained in said complaint in intervention, the court finds that at no time prior to January 12, 1944 was there an action in condemnation pending in the United States District Court, Southern District of California, Central Division, numbered 2454-B Civil in which the personal property hereinabove described, or any part thereof was sought to be appropriated or condemned by the United States of America for use of the Reconstruction Finance Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation, or otherwise.

That it is not true that Treasure Company was offered or tendered reasonable or any compensation for the taking or detention of the said personal property or any part thereof, nor was any such compensation offered or tendered to the person or persons or concerns or corporations lawfully entitled thereto.

XVII.

With respect to said third separate and distinct defense contained in said complaint in intervention, the court finds that Action No. 2454-B Civil was commenced September 28, 1942, in the United States District Court, Southern District of California, Central Division, and said action is now, and at all times since September 28, 1942 has been, pending in said court. Said action when filed did not relate to, and at no time until January 12, 1944, did

it relate to the personal property hereinabove described, or any part thereof. Said action was on September 28, 1942, and at all times until January 12, 1944, an action in condemnation of real property only, including, amongst other parcels of land, said Block 33, Tract 9809 in the County of Los Angeles, State of California, as per map of said tract recorded in Book 145 of Maps [123] at pages 91-96 inclusive, Records of said County. Said action was brought by the United States of America, for the use of Reconstruction Finance Corporation, a federal corporation, and the public use for which said real property was sought to be taken was the establishment of a reservoir for the storing and conservation of natural gas.

Neither the United States of America, the said Reconstruction Finance Corporation, a federal corporation, or Defense Plant Corporation, a federal corporation, at any time prior to October 4, 1943 intended to take said personal property, or any part thereof, in or by reason of said condemnation action, nor did they, or any of them, institute any action to condemn all or any of said personal property until January 12, 1944.

XVIII.

With respect to the third separate and distinct defense contained in the said complaint in intervention the court finds that prior to September 28, 1942, and at all times since, the Reconstruction Finance Corporation was authorized by Act of Congress (Title 15 U. S. C. A., Section 606b), in order to aid the government of the United States in its National Defense Program to create or organize a corporation, or corporations, "with power (a) to produce, acquire, carry, sell, or otherwise deal in strategic and critical materials as defined by the President; (b)

to purchase and lease land, purchase, lease, build and expand plants, and purchase and produce equipment, facilities, machinery, materials, and supplies for the manufacture of strategic and critical materials, arms, ammunition, and implements of war, any other articles, equipment, facilities, and supplies necessary to the national defense, and such other articles, equipment, facilities and supplies necessary to the national defense and such other articles, equipment, supplies, and materials as may be required in the manufacture or use of any of the foregoing or otherwise necessary in connection therewith; (c) to lease, sell, or otherwise dispose of such land, plants, facilities, and machinery to others to engage in such manufacture; [124] (d) to engage in such manufacture itself, if the President finds that it is necessary for a Government agency to engage in such manufacture itself." Defense Plant Corporation has been created by Reconstruction Finance Corporation for said purposes, among others.

XIX.

With respect to Paragraph III of the said third separate and distinct defense in said complaint in intervention, the court finds that it is not true that on or about September 29, 1942 or at any time prior to January 12, 1944, the United States of America for the use of Reconstruction Finance Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation, or otherwise, appropriated or took the above described personal property or any part thereof under claim of eminent domain for the national defense or for use in the establishment of a reservoir for the injection, storage, conservation or withdrawal of natural gas or incidental purposes or for use in the operation of oil or gas wells or in the treating, storing or disposing of the

products thereof or otherwise or that it thereupon lawfully delivered said personal property or any part thereof to the defendant Union Oil Company of California, a corporation, for such uses or purposes or any of them, on behalf of the Defense Plant Corporation, a federal corporation, or otherwise.

XX.

With respect to Paragraph IV in said third, separate and distinct defense contained in said complaint in intervention, the court finds that there was no lawful appropriation of said personal property or any part thereof made at the request of the assistant secretary of the Reconstruction Finance Corporation, an agency of the United States of America or under the direction of the Attorney General of the United States, on September 29, 1942 or at any time prior to January 12, 1944. [125]

XXI.

The court finds that at the time of the commencement of this action, and thereafter until and at all times after January 12, 1944, it was impossible for the defendant Union Oil Company of California, a corporation, to deliver said personal property of the plaintiff Treasure Company, a corporation, or any portion thereof to the said Treasure Company, a corporation in substantially the same condition as it was in when first taken and received by the defendant Union Oil Company of California, a corporation, as aforesaid.

On January 12, 1944 an amended complaint was filed by the United States of America in said action No. 2454-B Civil in the United States District Court, Southern District of California, Central Division, wherein the said United States of America sought to condemn said personal property for the Reconstruction Finance Corporation, a federal corporation, acting in behalf of Defense Plant Corporation, a federal corporation, and thereupon claimed possession of said personal property by virtue of said condemnation.

XXII.

The court finds that all allegations contained in the answer of the defendant Union Oil Company of California, a corporation, and in the said complaint in intervention of the Reconstruction Finance Corporation, a federal corporation, as successor in interest to the Defense Plant Corporation, a federal corporation, with respect to which specific findings are not made, are untrue. [126]

CONCLUSIONS OF LAW

I.

By reason of the facts hereinabove found relative to the filing on January 12, 1944 of an amended complaint in the condemnation action No. 2454-B Civil, in the United States District Court, Southern District of California, Central Division, it has been legally impossible since January 12, 1944 for the defendant Union Oil Company of California, a corporation, to deliver back to the plaintiff herein the personal property hereinabove de-

scribed, even if the same existed in substantially the same condition as when taken by said defendant and were still in its possession.

II.

The plaintiff Treasure Company, a corporation, is entitled to have and recover of and from the defendant Union Oil Company of California, a corporation:

1. The sum of \$4,496.15 as the reasonable market value of said personal property together with interest thereon from the 12th day of January, 1944 at the rate of 7% per annum, until date of judgment.

2. The sum of \$1,700.00 as the reasonable rental value of said personal property from September 28, 1942 to January 12, 1944.

3. The plaintiff's costs of suit incurred or expended herein.

Let judgment be entered accordingly.

Dated: This 5th day of ~~December~~, 1945.

~~William J. Palmer~~

W. J. Palmer, Judge of said Court [127]

Bodkin, Breslin & Luddy
Attorneys at Law
1225 Citizens National Bank Bldg.
453 South Spring Street
Los Angeles 13, California
MUtual 3151
Attorneys for Plaintiff

In the Superior Court of the State of California
in and for the County of Los Angeles
No. 489 318

Treasure Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant. Reconstruction Finance Corporation, a Federal corporation, successor in interest to Defense Plant Corporation, a Federal corporation, Complainant in Intervention.

JUDGMENT

This cause came on regularly for trial in Department 29 of the above entitled court before the Honorable William J. Palmer, Judge presiding therein, without a jury on the 11th day of September, 1945 and was tried on the 11th, 12th, 13th, 19th, 20th, 21st, 24th, 25th, 26th and 27th days of September and on the 1st, 2nd, 3rd, 4th, 9th and 18th days of October, all in 1945, together with a case entitled "Samarkand Oil Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, defendant," number 489319, in the files of said court, said cases having been consolidated for trial by stipulation. Messrs. Henry G. Bodkin and E. E. Hitchcock of the firm of Bodkin, Breslin & Luddy appeared [128] at said trial on behalf of the plaintiff Treasure Company, a corporation, and Messrs. Jacob J. Lieberman and Aaron Elmore of the firm of Benjamin, Lieberman and Elmore.

and Messrs. J. F. McPherson and August Weyman, Deputy United States Attorney General, appeared at said trial on behalf of the defendant Union Oil Company of California, a corporation, and the complainant in intervention, Reconstruction Finance Corporation, a federal corporation, as successor in interest to Defense Plant Corporation, a federal corporation. Evidence both oral and documentary was introduced by the respective parties and after argument of counsel for said parties the case was submitted to the court on October 18, 1945 and the court being fully advised in the premises and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered accordingly, now, therefore, by reason of the law and findings as aforesaid,

It is Hereby Ordered, Adjudged and Decreed:

That the plaintiff Treasure Company, a corporation, have and recover of and from the defendant Union Oil Company of California, a corporation:

1. The sum of \$6,196.15, together with interest on the sum of \$4,496.15 from the 12th day of January, 1944 until the date of this judgment at the rate of 7% per annum, said interest being in the sum of \$595.08;
2. Plaintiff's costs of suit expended herein, and herein taxed at \$138.50.

Dated this 5 day of December, 1945.

Wm. J. Palmer

WILLIAM J. PALMER

Judge of said Court.

Case No. 2454-B-Civ. U. S. vs. Land. Respt. Treasure Co. Exhibit No. A in Evidence. Date 6-10-46. Clerk, U. S. District Court, Sou. Dist. of Calif. R. B. Clifton, Deputy Clerk. [129]

[Title of District Court and Cause]

STIPULATION RE RECORD ON APPEAL
AND ORDER

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, that the Notice of Ruling of Judge William J. Palmer in Los Angeles Superior Court actions No. 489318 and No. 489319 entitled "Treasure Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant, et al.," and "Samarkand Oil Company, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant," respectively, dated February 20, 1945, and the Notice of Decision of the said Judge William J. Palmer dated October 23, 1945, in Los Angeles Superior Court cases numbered 489318 and 489319 and entitled as above stated are the Notice of Ruling and the Notice of Decision which [130] were presented to and considered by Judge Campbell E. Beaumont in the instant case, "United States of America, et al., Plaintiff, vs. Certain Parcels of Land in the City of Los Angeles, et al., Defendants," No. 2454-B Civil, in the proceedings before said Judge in this case on June 10 and June 11, 1946, upon the application for the injunction, the Order granting which is here appealed from.

It Is Further Stipulated that said Notice of Ruling and Notice of Decision may be certified as a part of the record on appeal in this action by the Clerk in this appeal

by defendants Treasure Company, a corporation, and Samarkand Oil Company, a corporation, from that certain Order of the District Court of the United States in and for the Southern District of California, Central Division, made and entered into on the 4th day of August, 1947, as requested by the said defendants in their Designation of Record, as items 15 and 16 thereof, and said Designation of Record having been heretofore filed herein on August 18, 1947.

Dated: September 23rd, 1947.

JAMES M. CARTER

United States Attorney

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney, Lands Division,
Department of Justice

By A. Weymann

Attorneys for Plaintiff, United States of
America

Defendants, TREASURE COM-
PANY, LTD., a corporation,
and SAMARKAND OIL COM-
a corporation,

^c By Bodkin, Breslin & Luddy

By E. E. Hitchcock

Attorneys for Said Defendants. [131]

ORDER

Pursuant to the foregoing Stipulation between the above named parties in the above entitled action, and good cause appearing therefor,

It Is Hereby Ordered that the said Notice of Ruling of Judge William J. Palmer in Los Angeles Superior Court actions No. 489318 and 489319 entitled "Treasure Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant, et al.," and "Samarkand Oil Company, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant," respectively, dated February 20, 1945, and the Notice of Decision of the said Judge William J. Palmer dated October 23, 1945, in Los Angeles Superior Court cases numbered 489318 and 489319 and entitled as above stated are the Notice of Ruling and the Notice of Decision, which were presented to and considered by Judge Campbell E. Beaumont in the instant case, "United States of America, et al., Plaintiff, vs. Certain Parcels of Land in the City of Los Angeles, et al., Defendants," No. 2454-B Civil, in the proceedings before said Judge in this case on June 10, and June 11, 1946, upon the application for the injunction, the Order granting which is here appealed from; and

It Is Further Ordered That said Notice of Ruling and Notice of Decision shall be certified as a part of the record on appeal in this action by the Clerk, in this appeal by defendants Treasure Company, a corporation, and Samarkand Oil Company, a corporation, from that certain Order of the District Court of the United States in and for the Southern District of California, Central Division, made and entered into on the 4th day of August,

1947, as requested by the said defendants in their Designation of Record, as items 15 and 16 thereof, and said Designation of Record having been heretofore filed herein on August 18, 1947.

Dated: September 24, 1947.

C. E. BEAUMONT

Judge [132]

In the Superior Court of the State of California
in and for the County of Los Angeles

Treasure Company, a corporation, Plaintiff, vs. Union Oil Company of California, a corporation, Defendant.
No. 489318.

Samarkand Oil Company, a corporation, Plaintiff vs. Union Oil Company of California, a corporation, Defendant. Defense Plant Corporation, a Federal Corporation, Complainant in Intervention. No. 489319.

NOTICE OF RULING

To Counsel:

This rather informal memorandum to counsel will be written as if it applied to only one case, but counsel will understand that it applies to each of the two cases, the respective titles of which are above set forth.

Two motions are before the court, made pursuant to the [133] notice of motion, bearing date February 1, 1945 and filed February 5, 1945. Without stating the motions in the language of the notice, I shall comment that one of them is equivalent to a plea in bar, the granting of which would result in a dismissal of the action.

The other may more aptly be called a plea in abatement, the granting of which would result only in an indefinite postponement of the trial.

In considering the two motions, one must guard against three possible pitfalls that might prevent a true analysis and a sound conclusion. The first is the invitation to decide the case on its merits, from the evidence presented in affidavits and admitted, and under the law as the court might hold it to be after a thorough consideration of the extensive briefs filed by counsel.

I believe that I have successfully guarded against this first pitfall. I have been particularly eager to do so in view of the possibility that if the motions are denied the case may be tried before me.

The second temptation to deviate from a true course of thinking is the inclination to hurriedly yield exclusive jurisdiction to the Federal courts because certain Federal laws and the conduct of certain Federal officers are involved. In addressing the eminent counsel in this case, I need not elaborate on the comment just made.

The third opportunity for going astray lies in the commonly accepted idea that the propriety of a plea in bar or in abatement is determined by the identity of the issues in the two actions involved. At this point I would emphasize the incompleteness of that thought. Two actions might involve similar or identical issues of fact and law, and yet, because the remedy sought in one is entirely different from the remedy sought in the other, the trial of both actions might be necessary.

Among the several rules that have been laid down for the [134] testing of pleas in bar and in abatement, the one which goes directly to the heart of the matter, which

is not "technical", as that term is commonly understood, but which vitally affects the administration of justice as between the parties involved, is the principle which underlies, as the *raison d'être*, the whole practice of abatement, and which provides that a prior action will bar a later when the same relief is sought in both, when the former will afford an ample remedy so that a final judgment in it would constitute a bar to the second. Manifestly, when such a state of facts exists, the second action is unnecessary and vexatious.

Bolton v. Landers, 27 Cal. 104

Security Trust & Sav. Bank v. Claussen, 44 Cal. App. 730

Dyer v. Scalmanini, 69 Cal. 637

Fresno Planing Mill Co. v. Manning, 20 Cal. App. 766

Baker v. Eilers Music Co., 175 Cal. 652

McCormick v. Gross, 135 Cal. 302

Hall v. Susskind, 109 Cal. 203

Martin v. Splivalo, 69 Cal. 611

Vance v. Olinger, 27 Cal. 358

Cyclopedia of Federal Procedure, 2nd Edition, vol. 7, p. 342, note 13

Harrison v. Wash. Loan & Tr. Co., 258 Fed. 273

Chicago B. & Q. R. Co. v. Weil, 183 Fed. 956

Watson v. Jones, 80 U. S. 679

Tebbe v. Union Realty Corp., 286 Fed. 1011

N. Y. Cotton Exchange v. Hunt, 144 Fed. 511, 205 U. S. 322; 51 L.^c Ed. 821.

It may fairly be said, I think, that all the other rules applying to pleas in abatement, were designed to make certain that the one basic principle stated in the forego-

ing paragraph was properly invoked. In passing we may note that such pleas are not [135] favored and are strictly construed.

1 Cal. Jur. 81, sec. 50 and notes 16 and 17.

Let us direct our attention to the basic question, and consider the possibilities involved.

At this point we must confine ourselves to considering possibilities, for were we to attempt to determine probabilities, we would be undertaking to decide the merits of the controversy.

If the Federal court, in action No. 2454-B Civil,¹ should hold that possession of the personal property never was lawfully taken from the plaintiff, no judgment in condemnation would ensue,² and plaintiff would leave the Federal court with no compensation whatsoever for the damage claimed to have been suffered from the acts of Federal officials thus held to have acted unlawfully.

If the Federal court, in action No. 2454-B Civil, should hold that possession of the personal property was not lawful prior to the filing of the pleading titled a "First Amended Complaint," but became lawful at that time, the court would be powerless in that action to do anything about the unlawful possession previous to that date. Although in condemnation a property owner is supposed to receive full compensation for the property taken and for the damages suffered from the taking, the damages thus embraced are only those that flow from the lawful taking. They do not include injury suffered from prior unauthorized and unlawful acts of public officials. Hence,

in the event of the possibility here being considered, the Federal court could not give plaintiff any relief for an element of damage claimed to have been suffered and claimed to be substantial.

If the Federal court should decide that the taking of the personal property was lawful in the first instance and that thereafter the holding of possession against the plaintiff has been lawful, and if such a decision should follow a judgment of this court against the plaintiff, plaintiff would stand before the [136] Federal court as the one to be compensated for the taking of the property. No difficulty or entanglement of status would result from the two trials.

If prior to such a judgment of the Federal court, this court were to deliver a judgment in plaintiff's favor against the Union Oil Company of California, such judgment of this court would be founded on one of two theories: 1. That the taking of possession by Federal officials was unlawful and the holding of possession since has been unlawful. In such a case, the judgment of this court, except for the element of damages, would be in the alternative. If the defendant should pay the adjudicated value of the property rather than return it, or if judgment for such value should be satisfied by execution, the title to the property would pass to defendant. The Union Oil Company of California then would stand before the Federal court as the party to be compensated for the property. No entanglement of status would obstruct the orderly proceedings of that court. As there is no likeli-

hood of defendant returning the property to the plaintiff so long as the Federal action pends, we need not spend time on that possibility.

2. If this court should hold that the taking of the property was unlawful in the first instance, but became lawful when the "First Amended Complaint" was filed in the Federal action, it might pursue either of two courses, depending on how it viewed the law. 1. It might regard the present factual status as a complete defense to replevin, and award only damages suffered by plaintiff from the date of the taking to the date of the filing of the amended pleading. In that case, plaintiff would stand before the Federal court as the one to be compensated for the property, and no entanglement of status would obstruct the orderly proceedings of that court. 2. It might find against the defendant, concluding that if defendant had not retained the personal property, that property would not have remained on the land, and no occasion [137] for filing the amended pleading would have existed. So viewing the matter, the court might hold that the defendant had converted the property, and as defendant would not be able to redeliver, an alternative judgment would be useless. This court then would give plaintiff judgment for damages and for the value of the property. The title to the property would be vested in defendant; and defendant then would stand before the Federal court as the one to be compensated. No entanglement of status would obstruct the orderly proceedings of that court.

For the reasons that I have indicated, I hold that the duty of this court is to try the action and that a serious injustice might be done to plaintiff to deny to it the day in court to which it appears to be entitled. I do not consider it necessary to deal with certain other, and perhaps more "technical", rules, which also may be obstacles to the pleas in bar and abatement.

In connection with the foregoing, we should have in mind the significance of the fact that plaintiff's cause of action, regardless of the legal questions or evidential issues of fact that may become involved, or their complications, is a simple cause of action in replevin, commonly called "claim and delivery", and is not prosecuted for the purpose of recovering compensation from anyone or any government or institution in return for a lawful taking of property. The case is based on alleged ownership and right of possession, and the mere fact that another case of an entirely different nature, premised on an entirely different theory, prosecuted for an entirely different purpose, involves certain identical questions of law and fact, does not bar plaintiff's pursuit of a remedy, which, if its allegations are true, can be obtained only in this action.

The motions hereinabove referred to are denied.

Done this 20th day of February, 1945.

William J. Palmer

Judge

[Endorsed]: Filed Feb. 20, 1945. [138]

In the Superior Court of the State of California
in and for the County of Los Angeles

Treasure Company, a corporation, Plaintiff, vs. Union
Oil Company of California, a corporation, Defendant.
No. 489318.

Samarkand Oil Company, a corporation, Plaintiff, vs.
Union Oil Company of California, a corporation, De-
fendant. No. 489319.

NOTICE OF DECISION

To Counsel:

The unique final "argument" of Attorney J. F. McPherson for the defendant suggests that certain points made by the court, when announcing from the bench its ruling on the question of liability, ought to be stated again, or clarified; or, if perchance the court only hinted and failed to state a conclusion involved in the progression of thought leading to its decision, to state such conclusion at this time as precisely as possible, all to the end that counsel may be guided in the preparation of [139] findings, conclusion and judgment. (In referring to the uniqueness of the final statement of distinguished and brilliant counsel, I did not intend reference to his warning that an appeal from the trial court's decision would be prosecuted. Every now and then, for some reason that I never have been able to understand, a lawyer reminds the trial judge that an appeal is in the offing, although many of the ablest lawyers assume that the trial judge knows of the right and possibility of appeal and refrain from any "argument" based on an assumption to the contrary.)

This court has not found that the United States government, or any agency of it, seized the property involved in this case on or about September 28, 1942. The court does find that an individual who held the office of United States Marshal, without any authorization from any source, without process of court related to the property in question, without direction from any agency of the government, falsely assumed dominion over the property and falsely assumed authority to deliver it into the custody of the defendant, which, equally without right or authority, thereupon asserted and took dominion over the property and thereafter held possession thereof against the demands of plaintiffs for its return.

This court has not held of its own opinion that any agency of the government ever came into lawful possession of the property in question, but the court has presumed, for the purposes of this trial, that in permitting the filing of a late amendment to a condemnation action pertaining to real estate, by which amendment the action was made to embrace the personal property involved in this case, the United States District Court acted properly and in accordance with law. Invoking that presumption leads to the conclusion that the property was condemned as of the date of the filing of the amendment and that thereupon the United States Government, through the Defense Plant Corporation, in exercise of the [140] right of eminent domain came into lawful possession of the property.

It would be inaccurate to leave the impression that this judge is of the personal opinion that the commencement of condemnation proceedings against the personal property involved in this case, by way of such amend-

ment filed in January, 1944, when the actions in this Superior Court were threatened and were about to be commenced, was in good faith or was founded on any need by the Government for the property or on any intention to put it to the public use. This court merely applies the presumption of good faith and regularity to the proceedings of the federal agencies involved.

This court has not found that the action of the person who first asserted unlawful dominion over the property in September of 1942 and assumed authority to deliver it over to the defendant was thereafter ratified by any agency of the United States Government. To the contrary, this court is of the opinion that no agency of the United States Government had authority to ratify such an act and the court holds that no such agency ever did ratify it. The court finds also that the unlawful action of the defendant in detaining the property from the plaintiffs never has been ratified by any agency of the United States Government, and the court is of the opinion that no such agency has had authority to ratify such conduct.

Concerning the Expert Testimony

Considering now the question of damages, this being quite an informal statement, let me shift to the first person. I stated from the bench that I believed in the sincerity of all the expert witnesses and regarded the conflict among them as being a clash in points of view rather than in motive. I still am of that opinion as to the matter of motive and integrity, but I must elaborate and say that the conflict arises from more than difference in points of view. The personal experiences upon which each witness [141] has relied, his memory, his

ability or lack of ability to visualize conditions as of September, 1942, his imagination, and the effect upon his mind of seeing the property after months of neglect—these factors, I am sure, have played a part in giving us many wide disagreements. Even among defendant's witnesses these disagreements have been marked. This fact is a token of their independent, individual approach and of their sincerity, but is very convincing evidence of either or both of two possible conditions: (1) that there existed an extremely wide margin, within which market value fluctuated; (2) that each of the defendant's experts testified more from his own limited personal experience than from a broad knowledge of general market conditions and prices.

Among defendant's witnesses we have variations ranging in ratios up to 30 to one, a difference of 2900 per cent. We have a disagreement that reaches from no value to \$150. We have many differences in lower ratios: three to one, four to one, five to one, ten to one, fifteen to one, twenty to one. These wide variations take much from the positiveness of the testimony of defense experts.

The most significant conflict in the testimony of values is that between the testimony of Mr. De Bretteville and Mr. Summers, on the one hand, and the testimony of Mr. O'Brien on the other as to new values, cost or replacement values. Ordinarily we should expect testimony as to cost prices to show little disagreement. If two witnesses, each for a different side, were well prepared on that subject before coming to court, each having had access to catalogs and reliable sources of information to confirm his estimates, no general, substantial

conflict ought to exist between their testimony. But between the testimony of the plaintiffs' witnesses and that of Mr. O'Brien for the defendant wide disagreement exists throughout the entire inventory as to original cost [142] prices, the variation running from two to one to ten to one in one instance, with many instances where the ratio is of four or more to one. I liked Mr. O'Brien and regarded him as a man of ability and of integrity. But he came to court not expecting to be called upon to give the cost prices of new items and he gave his testimony as to such prices from memory and on the spur of the moment. I am satisfied that he was in error and that the evidence presented by the plaintiffs as to cost prices was dependable throughout, the result of a careful and efficient investigation to obtain from reliable sources the cost of sales prices of new materials and equipment. The conflict as to these prices gives further evidence of the frailty of memory and of how human and limited all of us are. The ideas of new values as of September, 1942 exhibited by the witness reflects significantly on his ideas of second-hand values.

Another bit of testimony that throws light on our problem was that of defendant's witness Mr. Webb as to the cost of putting certain of the equipment into good condition for renting. It is possible, of course, for the repair of an item of machinery to cost more than the machinery is worth; but ordinarily a reasonable relationship exists between the cost of repair and the value. Mr. Webb's own testimony, considered most favorably to the

defendant, as to what the rental value of the equipment would be after the proposed repairs were made, shows that the estimated cost of the repairs bore a reasonable and normal relationship to the value of the equipment—a value far out of line with that attached to it by defendant's experts.

As my findings to be shortly announced will show, I do not go all the way with plaintiffs' witnesses as to the fair market value of the property, but I do accept as reliable their testimony as to replacement costs and I do not question the sincerity of [143] their testimony as to the condition of the property when possession was taken by the defendant. It will be noted, and I may as well frankly state, that I am placing a good deal of faith in the O.P.A., although I do not hold that an O.P.A. ceiling is necessarily fair market value, and in this instance I give importance to the ceiling not as an isolated fact but in connection with and in the light of all other evidence. A technician might even question the admissibility of evidence of O.P.A. ceilings, and could support his doubt by a strong argument, for a governmental, war-measure restriction upon sales price does not give an answer to the question: what would a willing buyer, not compelled to buy, be willing to pay?

Samarkand

I find the fair market values of the items of property involved in the Samarkand case, each considered separately, as of September 28, 1942, to be as follows:

Tank	\$ 550.00	31	50.00
1	16,664.08	32	644.60
2	1,914.00	33	200.00
3	4,767.40	34	825.00
4	7,706.05	35	82.50
5	1,000.00	36	74.25
6	550.00	37	99.00
7	880.00	38	46.75
8	586.30	39	77.00
9	494.45	40	165.00
10	1,222.66	41	74.25
11	615.92	42	125.00
12	500.00	43	100.00
13	328.00	44	300.00
14	247.50	45	66.00
15	68.75	46	66.00
16	74.25	47	82.50
17	42.00	48	280.50
18	200.00	49	165.00
19	2,100.00	50	20.00
20	1,450.00	51	118.91
21	750.00	52	137.50
22	1,557.98	53	82.50
23	794.20	54	165.00
24	1,306.25	55	990.00
25	1,000.00	56	400.00
26	1,100.00	57	82.50
27	196.35	58	214.50
28	165.00	59	550.00
29	220.00	60	33.00
30	55.00 [144]		
			<hr/> \$55,423.40

I believe that some discount from the total of the above stated values should be made in considering the property as a unit, as constituting one "outfit", having a market value as such. I believe that we should so regard the property for the purposes of this action, and I determine its fair market value to have been \$50,000.00.

In determining the rental value, I am attaching significance to the long period of time involved, as against the short periods for which equipment usually is rented; also I am not losing sight of the fact that theoretically in our case the property would remain in good condition throughout the rental period, a theoretical fact that would indicate a lower rental rate than would prevail through many shorter leasings covering the same extended period; also I am assuming that some expense would be required ordinarily to condition and repair the property before each leasing. [145]

With these factors in mind, I determine the fair rental value of the Samarkand property from September 28, 1942 to January 12, 1944, to have been \$18,750.00.

I find the fair market value of the Treasure Company property on September 28, 1942 to have been as follows:

1	\$ 110.00	4	192.50
2	1,650.00	5	200.00
3	2,343.65		<hr/>
			\$4,496.15

I find the fair rental value of that property for the period in question to have been \$1,700.00.

Judgment is ordered that the plaintiff Samarkand Oil Company have and recover of and from the defendant the sum of \$68,750.00, together with interest on \$50,000.00 at the legal rate from January 12, 1944.

Judgment is ordered that the plaintiff Treasure Company have and recover of and from the defendant the sum of \$6,196.15, together with interest at the legal rate on \$4,496.15 from January 12, 1944.

Stay of execution for a period of ten days from and after the entry of judgment is granted, and if within that time a notice of intention to move for new trial is filed, the stay of execution shall continue in force until the expiration of ten days after the ruling thereon.

October 23, 1945.

William J. Palmer

Judge

[Endorsed]: Filed Sep. 24, 1947. [146]

[Minutes: Thursday, January 9, 1947]

Present: The Honorable C. E. Beaumont, District Judge.

On motion of plaintiff for injunctions against defendants Treasure Company and Samarkand Oil Co. to restrain actions Nos. 507,385; 507,386; 505,967; and 505,968 now pending in the Superior Court of the State of California, in and for the County of Los Angeles, it is ordered that the said motion is denied as to actions Nos. 507,385 and 507,386, the defendants having stipulated that "we will not try those cases until this present case is determined finally", and that the said motion is granted as to actions Nos. 505,967 and 505,968. [147]

In the District Court of the United States, in and for the
Southern District of California

Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the Use of
RECONSTRUCTION FINANCE CORPORA-
TION, a Federal Corporation, Acting in Behalf of
DEFENSE PLANT CORPORATION, a Federal
Corporation.

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF
LOS ANGELES, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA; CITY OF LOS AN-
GELES, a Municipal Corporation, etc., et al.,

Defendants.

ORDER AND DECREE ON PLAINTIFF'S PETI-
TION TO RESTRAIN PROCEEDINGS IN THE
SUPERIOR COURT OF THE STATE OF CALI-
FORNIA BY DEFENDANTS TREASURE
COMPANY AND SAMARKAND OIL COM-
PANY

Plaintiff's motion for an injunction and restraining
order in aid of its Complaint in Condemnation upon plain-
tiff's petition filed herein March 26, 1946, to restrain and
enjoin the further prosecution of that certain action filed
in the Superior Court of the State of California, in Los

Angeles County, on September 27, 1945, as Case No. 505,967, entitled *Treasure Company vs. Union Oil Company of California*; and that certain action filed September 27, 1945, in the Superior Court of the State of California, Los Angeles County, as Case No. 505,968, entitled *Samarkand Oil Company vs. Union Oil Company of California*; and that certain action filed November 10, 1945, in the Superior Court of the State of California, Los Angeles County, as Case No. 507,385, entitled *Treasure Company vs. Union Oil Company of [148] California*; and that certain action filed in the Superior Court of the State of California, Los Angeles County, on November 10, 1945, as Case No. 507,386, entitled *Samarkand Oil Company vs. Union Oil Company of California*, came on for hearing before the above entitled court on April 8, 1946, the petitioner appearing by Joseph F. McPherson, Special Assistant to the Attorney General, and August Weymann, Special Attorney, Lands Division, Department of Justice, its attorneys; and the defendant *Treasure Company* appearing by its attorneys, Bodkin, Breslin and Luddy, by Henry G. Bodkin, Esq.; and the defendant *Samarkand Oil Company* appearing by its attorneys, Bodkin, Breslin and Luddy, by Henry G. Bodkin, Esq.; and the *Union Oil Company of California* appearing by Benjamin and Lieberman, its attorneys, by J. J. Lieberman, Esq., and the motion being fully argued by counsel and thereafter submitted, and the Court being fully advised in the premises, and after due deliberation, now finds and decides as follows:

I.

That the defendants Treasure Company and Samarkand Oil Company have stipulated and represented to the Court in open court that they do not intend to and will not try those two certain actions now pending in the Superior Court of the State of California, County of Los Angeles, entitled Treasure Company vs. Union Oil Company of California, Case No. 507,385, and Case No. 507,386, entitled Samarkand Oil Company vs. Union Oil Company of California, until the above entitled cause in this court is finally determined, and that accordingly plaintiff is not entitled to an injunction restraining the defendants Treasure Company and Samarkand Oil Company from proceeding further in said last above mentioned cases in the Superior Court of the State of California.

II.

That plaintiff is entitled, upon its petition filed herein and upon the files and records of this court, to a temporary injunction, enjoining and restraining the defendant Treasure Company and the [149] defendant Samarkand Oil Company, and their respective agents and attorneys, successors and assigns, and each of them, from proceeding further in those two certain actions now pending in the Superior Court of the State of California, County of Los Angeles, entitled Treasure Company vs. Union Oil Company of California,^c Case No. 505,967, and Samarkand Oil Company vs. Union Oil Company of California, Case No. 505,968, and each of them, or from doing or attempting to do any act, or taking any proceeding, tend-

ing to fix or determine their rights, or the rights of any or either of them, or petitioner, United States of America, or of any of its agencies and their agents, in connection with, resulting from, or growing out of the entry upon, taking, and continued possession or condemnation of the property, or any portion thereof, described in petitioner's First Amended Complaint in the above captioned proceeding, except such proceedings in this court as are provided for by its rules of practice or by the laws in such case made and provided.

It is Therefore Ordered, Adjudged and Decreed:

That Treasure Company, a corporation, and Samarkand Oil Company, a corporation, and their respective agents and attorneys, successors and assigns, and each of them, be and they hereby are enjoined and restrained from proceeding further in those two certain actions now pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled, respectively, Treasure Company vs. Union Oil Company of California, filed as Case No. 505,967, and Samarkand Oil Company vs. Union Oil Company of California, filed as Case No. 505,968, or from doing or attempting to do any act, or taking any proceeding, tending to fix or determine their rights, or the rights of any or either of them, or of the United States of America, or of any of its agencies and their agents, in connection with, resulting from, or growing out of the entry upon, taking, and continued possession or the condemnation of the property, or of any portion thereof, described in the said petitioner's First Amended

[150] Complaint on file herein except such proceedings in this court as are provided for by its rules of practice or by the laws in such case made and provided.

Dated: This 27th day of January, 1947.

C. E. BEAUMONT

United States District Judge

Presented by:

JAMES M. CARTER

United States Attorney

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney, Lands Division,

Department of Justice

By A. Weymann

Attorneys for Plaintiff

Judgment entered Jan. 27, 1947. Docketed Jan. 27, 1947. C. O. Book 41, page 477. Edmund L. Smith, Clerk; by R. B. Clifton, Deputy.

[Endorsed]: Filed Jan. 27, 1947. [151]

In the District Court of the United States in and for the
Southern District of California

Central Division

No. 2454-B Civil

UNITED STATES OF AMERICA, for the use of
RECONSTRUCTION FINANCE CORPORA-
TION, a Federal Corporation, acting in behalf of
DEFENSE PLANT CORPORATION, a Federal
Corporation,

Plaintiff,

vs.

CERTAIN PARCELS OF LAND IN THE CITY OF
LOS ANGELES, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA; CITY OF LOS AN-
GELES, a Municipal Corporation; TREASURE
COMPANY, a corporation; SAMARKAND OIL
COMPANY, a corporation, et al.,

Defendants.

ORDER MODIFYING ORDER AND DECREE ON
PLAINTIFF'S PETITION TO RESTRAIN PRO-
CEEDINGS IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA BY DEFEND-
ANTS TREASURE COMPANY AND SAM-
ARKAND OIL COMPANY

The motion of Treasure Company and Samarkand Oil
Company for an order to modify the order and decree
heretofore made on January 27, 1947, and entered in
Civil Order Book 41, at page 477, came on regularly to

be heard before the Honorable C. E. Beaumont, a Judge of the above entitled Court, and August Weymann, Esq., Special Attorney of Lands Division, appearing for plaintiff, and Henry G. Bodkin, Esq., appearing for defendants Treasure Company and Samarkand Oil Company, and it appearing that at the time of the making of such order of January 27, 1947, restraining the prosecution of certain actions then pending in the Superior Court of the State [152] of California, in and for the County of Los Angeles, it was the intention of the court that such order should constitute a temporary of interlocutory injunction and not a permanent injunction, and the court having heard the argument of counsel and being fully advised in the premises, and good cause appearing therefor:

It Is Hereby Ordered That the Last Paragraph of said order and decree of January 27, 1947, commencing on page 3, line 17, and ending on page 4, line 3, be, and the same is hereby amended nunc pro tunc as of January 27, 1947, to read as follows:

It Is Therefore Ordered, Adjudged and Decreed:

That Treasure Company, a corporation, and Samarkand Oil Company, a corporation, and their respective agents and attorneys, successors and assigns, and each of them, be and they hereby are enjoined and restrained from proceeding further in those two certain actions now pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled, respectively, Treasure Company vs. Union Oil Company of California, filed as Case No. 505,967, and Samarkand Oil Company

vs. Union Oil Company of California, filed as Case No. 505,968, or from doing or attempting to do any act, or taking any proceeding, tending to fix or determine their rights, or the rights of any or either of them, or of the United States of America, or of any of its agencies and their agents, in connection with, resulting from, or growing out of the entry upon, taking, and continued possession or the condemnation of the property, or of any portion thereof, described in the said petitioner's First Amended Complaint on file herein, until the further order of this Court, except such proceedings in this court as are provided for by its rules of practice or by the laws in such case made and provided.

Done in open Court this 22nd day of May, 1947.

C. E. BEAUMONT

Judge of said District Court

Approved as to form. James M. Carter, United States Attorney; by A. Weymann, Spl. Atty.

Judgment entered May 22, 1947. Docketed May 22, 1947. C. O. Book 43, page 277. Edmund L. Smith, Clerk; by _____, Deputy.

[Endorsed]: Filed May 22, 1947. [153]

[Title of District Court and Cause]

NOTICE OF MOTION FOR ORDER DISSOLVING
AND VACATING INTERLOCUTORY INJUNC-
TION GRANTED JANUARY 27, 1947

To United States of America, for the use of the Recon-
struction Finance Corporation, a Federal Corpora-
tion, acting in behalf of Defense Plant Corporation,
a Federal Corporation, plaintiff, and to Eugene D.
Williams, Esq., Special Assistant to the Attorney
General, James F. McPherson, Esq., Special Assist-
ant to the Attorney General, and to August Wey-
mann, Esq., Special Attorney for the Lands Division,
Department of Justice, Its Attorneys:

You, and Each of You Will Take Notice that on the
9th day of June, 1947, at the hour of 10:00 o'clock A. M.,
of said day, or as soon thereafter as counsel may be heard,
the defendants, Treasure Company, a corporation, and
Samarkand Oil Company, a corpor- [154] ation, will
move the above entitled court in the court room of the
Honorable C. E. Beaumont, in the Federal Building, Los
Angeles, California, for an order dissolving and vacating
that certain order and decree on plaintiff's petition to re-
strain proceedings in the Superior Court of the State of
California, in and for the County of Los Angeles, by said
defendants Treasure Company and Samarkand Oil Com-
pany, to-wit, those two certain actions pending in the
Superior Court of the State of California, in and for the
County of Los Angeles, entitled, respectively, Treasure

Company, a corporation, plaintiff, vs. Union Oil Company of California, a corporation, defendant, filed as Case No. 505-967, and Samarkand Oil Company, a corporation, plaintiff, vs. Union Oil Company of California, a corporation, defendant, filed as Case No. 505-968, which said order and decree was entered on January 27, 1947, in Civil Order Book 410 at page 477.

Said motion will be made on the grounds that said order and decree was erroneously and improvidently made and granted and its continuance in effect will work an unjust hardship upon said defendants in that said order restraining the prosecution of said actions, which were commenced for the purpose of recovering possession of certain personal property, consisting of oil well drilling and operating tools, equipment and supplies, particularly described in the complaints in said Superior Court actions, or the value thereof, which said personal property is alleged to have belonged to the respective plaintiffs in said actions on September 28, 1942, and that on said date the defendant, Union Oil Company, without the consent of the respective plaintiffs, wilfully took possession of said personal property and has refused to return the same, or any part thereof, notwithstanding demand was made therefor by the owners thereof; it appearing that the claim of the defendant Union Oil Company in its answers in said respective Superior Court actions to the effect that said personal property was taken by it as agent for the United States of America for the use of the Reconstruction Finance Corporation, a [155] Federal Corporation, acting

in behalf of Defense Plant Corporation, a Federal Corporation, and that said personal property is sought to be condemned in the above entitled action by the United States of America for the use of the Reconstruction Finance Corporation, a Federal Corporation acting in behalf of Defense Plant Corporation, a Federal Corporation, is untenable in that as it appears from plaintiff's petition for injunction that the resolution of the Board of Directors of the Reconstruction Finance Corporation directing the acquisition of said personal property consisting of said oil well drilling and operating tools, equipment and supplies by condemnation was not adopted until October 4, 1943, and that the amended complaint for the condemnation of said personal property was not filed in the above entitled action until January 12, 1944, and that the moving defendants cannot recover any compensation by any award which may be made in the above entitled action for the depreciation of the value of the said personal property between September 28, 1942, and January 14, 1944.

That said motion will be based upon the files, papers and records of the above entitled action and particularly upon the following documents which are on file herein:

1. Resolution of the Board of Directors of the Reconstruction Finance Corporation dated September 8, 1942;
2. Original complaint in condemnation filed September 28, 1942;
3. Order for immediate possession dated September 28, 1942;

4. Amendatory resolution of the Board of Directors of the Reconstruction Finance Corporation dated October 19, 1942;

5. Declaration of taking and decree on declaration of taking filed herein on October 26, 1942;

6. Amendatory resolution of the Board of Directors of the Reconstruction Finance Corporation adopted [156] October 4, 1943;

7. First amended complaint filed January 12, 1944;

8. Conclusions of the court and decision on motion for injunction made by the Honorable Paul J. McCormick and filed herein on June 12, 1945.

9. Affidavit of G. de Bretteville served and filed herewith.

BODKIN, BRESLIN & LUDDY

By Henry G. Bodkin

Attorneys for Defendants Treasure Company and
Samarkand Oil Company

Received copy of the within Notice this 28 day of May, 1947. James M. Carter, by A. Weymann, attorney for plff.

[Endorsed]: Filed May 28, 1947. [157]

[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION TO
VACATE INJUNCTION

State of California,
County of Los Angeles—ss.

G. de Bretteville, being first duly sworn, deposes and says:

That he is the President of Treasure Company and of Samarkand Oil Company, two of the defendants in the above entitled action, and that this affidavit is made in support of the motions of Treasure Company and Samarkand Oil Company for an order setting aside the order made by this Court on January 27, 1947, temporarily restraining said defendants from prosecuting two certain actions entitled, "Treasure Company, plaintiff vs. Union Oil Company, defendant," No. 505-967 in the Superior Court of the State of [158] California, in and for the County of Los Angeles, and "Samarkand Oil Company, plaintiff, vs. Union Oil Company, defendant," No. 505-968 of said Superior Court.

The Plaintiffs in said Superior Court actions seek to recover from said Union Oil Company certain oil well drilling and operating tools, equipment and supplies, including galvanized tanks, loading racks, bolted steel tanks, pipe lines, steel stairway, gauges, valves, nipples, gate valves, electrically power driven pumping plant, sucker rods, jump pump, dehydration tank, trumble gas trap, water lines, gas pipe lines, unitized heavy duty surface

hoist, two cylinder American compressor, $7\frac{1}{2}$ ton ice machine complete, several hundred feet of tubing, none of which items are or at any time were embedded in the land or permanently resting thereon, or permanently attached to that which is embedded in or permanently resting on the land by means of cement, plaster, nails, bolts or screws.

That the tubing above referred to is not embedded in the land but is temporarily placed inside of the metal casing which is surrounded by cement and which casing and cement serve to hold back the adjacent earth thereby forming and maintaining the hole in which the removable metal tubing is placed and in which tubing the sucker rods are in turn placed and upon the end of which sucker rods the pump is attached which forces the oil to the surface of the earth.

All of the above described items and all of the items described in the complaints in the respective state court actions, above referred to, except said casing which is not sought to be recovered in said state court actions, are readily removable and in good oil well drilling practice are from time to time moved from one well to another as drilling operations may require without injury to any of such items sought to be recovered in said state court actions or to the real property.

That by the terms of the lease and sublease under which Treasure Company and Samarkand Oil Company were in possession of the [159] land sought to be condemned in

the above entitled action the lessee and sublessees are granted the right to remove from said land during the term of said lease and subleases and at any time within three months after the expiration or other termination thereof all derricks, machinery, rigs, pipe, pumping stations and other property and improvements belonging to or furnished by the lessee or sublessees.

Wherefore, affiant prays that the injunction heretofore issued restraining the prosecution of the above described state court actions be dissolved.

G. de BRETTEVILLE

Subscribed and Sworn to before me this 22 day of May, 1947.

(Seal)

G. STUART SILLIMAN

Notary Public in and for Said County and State

Received copy of the withinin affidavit this 27 day of May, 1947. James M. Carter, by A. Weymann, Attorney for Plff.

[Endorsed]: Filed May 28, 1947. [160]

[Minutes: Monday, August 4, 1947]

Present: The Honorable C. E. Beaumont, District Judge.

It is ordered that motion of defendants Treasure Co., et al., to vacate injunction be, and it hereby is, denied. [161]

[Title of District Court and Cause]

NOTICE OF APPEAL FROM ORDER REFUSING
TO VACATE DECREE OF INJUNCTION

Notice Is Hereby Given that Treasure Company, a corporation, and Samarkand Oil Company, a corporation, two of the defendants named in the above entitled action, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from that certain order of the District Court of the United States, in and for the Southern District of California, Central Division, made and entered herein on the 4th day of August, 1947, refusing to dissolve and vacate its Interlocutory Injunction granted herein January 7, 1947 and entered on said date in Civil Order Book 410 at page 477, modified [162] by its order duly made and entered May 22, 1947 in Civil Order Book 43 at page 277.

Dated: August 15th, 1947.

BODKIN, BRESLIN & LUDDY

By Henry G. Bodkin

Attorneys for Said Defendants, Treasure Company,
a corporation, and Samarkand Oil Company, a
corporation [163]

Received copy of the within Notice of Appeal this 18th day of August, 1947. James M. Carter, U. S. Atty., by August Weymann, FB, Attorney for Plaintiff.

[Endorsed]: Filed Aug. 18, 1947. [164]

[Title of District Court and Cause]

STIPULATION—RE DESIGNATION OF RECORD;

ORDER—RE DESIGNATION OF RECORD

It Is Hereby Stipulated by and between the undersigned parties, through their respective counsel, that Item 6 of the Designation of Record, dated August 15, 1947, and heretofore filed herein by the defendants, Treasure Company, a corporation, and Samarkand Oil Company, a corporation, reading as follows:

“6. Original Complaint in this action No. 2454-B Civil, those portions thereof as follows:

- (a) Page 1, containing title of Court, number of case, name of document, and name of plaintiff; [176]
- (b) Page 9, line 22, the words, “Samarkand Oil Company, a California corporation”;
- (c) Page 10, line 24, the words, “Treasure Co., Ltd., a corporation;
- (d) Pages 12 to 15, both inclusive; pages 131 to 133, both inclusive. Filed September 28, 1942.”

may be changed and shall be deemed to read as follows:

“6. Original Complaint in this action No. 2454-B Civil, filed herein September 28, 1942.”

Dated: August 20, 1947.

JAMES M. CARTER

United States Attorney

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney, Lands Division,
Department of Justice

By A. Weymann

Attorneys for Plaintiff United States of
AmericaDefendants, TREASURE COM-
PANY, LTD., a corporation, and
Samarkand Oil Company, a corpo-
ration

By Bodkin, Breslin & Luddy

By E. E. Hitchcock

Attorneys for Said Defendants.

Pursuant to the foregoing Stipulation, and good cause
appearing therefor, [177]

It Is Hereby Ordered, that the Designation of Record,
dated August 15, 1947, and filed herein by defendants,
Treasure Company, a corporation, and Samarkand Oil
Company, a corporation, on the 18th day of August, 1947,
be, and it is hereby amended as follows:

Item 6 thereof, appearing at lines 28 to 32, both in-
clusive, of page 2, and lines 1 to 9, both inclusive, of page
3 of said Designation of Record, now reading as follows:

"6. Original Complaint in this action No. 2454-B
Civil, those portions thereof as follows:

(a) Page 1, containing title of Court, number
of case, name of document, and name of
plaintiff;

- (b) Page 9, line 22, the words, "Samarkand Oil Company, a California corporation";
- (c) Page 10, line 24, the words, "Treasure Co., Ltd., a corporation";
- (d) Pages 12 to 15, both inclusive; pages 131 to 133, both inclusive. Filed September 28, 1942";

is hereby amended and changed to read as follows:

"6. Original Complaint in this action No. 2454-B Civil, filed herein September 28, 1942."

Dated: August 21st, 1947.

LEON R. YANKWICH

Judge

[Endorsed]: Filed Aug. 21, 1947. [178]

[Title of District Court and Cause]

STIPULATION FOR ORDER EXTENDING TIME
OF PLAINTIFF TO FILE ITS COUNTER-
DESIGNATION OF RECORD ON DEFEND-
ANT'S APPEAL AND ORDER THEREON

The plaintiff in the above captioned proceeding, having stipulated with the defendants Treasure Company, a corporation, and Samarkand Oil Company, a corporation, that their designation of record on appeal from the order of this Court, entered August 4, 1947, which designation was filed in the office of the Clerk on August 18, 1947, may be amended in certain particulars.

It Is Hereby Stipulated and Agreed that the time for the plaintiff and appellee to file counter-designations of the record to be used in said defendants' said appeal may be extended to and including ten days from the date hereof.

Dated: This 21st day of August, 1947.

BODKIN, BRESLIN & LUDDY

By E. E. Hitchcock

Attorneys for Said Defendants, Treasure Company,
a corporation, and Samarkand Oil Company, a
corporation [179]

JAMES M. CARTER

United States Attorney

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney

By A. Weymann

Attorneys for Plaintiff

ORDER

On the foregoing stipulation it is so ordered.

Dated: This 21st day of August, 1947.

LEON R. YANKWICH

United States District Judge

[Endorsed]: Filed Aug. 21, 1947. [180]

[Title of District Court and Cause]

STIPULATION FOR AMENDMENT OF APPELLEE'S DESIGNATION OF RECORD ON APPEAL NUNC PRO TUNC, AND ORDER THEREON

Whereas, the plaintiff and appellee filed its designation of the record on appeal in the above captioned matter on August 27, 1947; and

Whereas, through clerical error that portion of the record set forth on lines 30 to 32, page 1, and lines 1 to 10, page 2, which appellee intended to designate was erroneously described:

Now, Therefore, It Is Stipulated and Agreed, by and between the said appellants and the appellee, that Item 1 of appellee's designation of the record may be amended nunc pro tunc as of August 27, 1947, to read as follows:

1. Amended Answer of defendant Treasure Company, a corporation, answering plaintiff's First Amended Complaint, including only those portions thereof as follows: [181]

Page 1, showing title, court, number of action, name of document, and caption of action; and the words, "Now comes defendant Treasure Company, a corporation, and answering plaintiff's first amended complaint for itself alone and not for its co-defendants, files this its first amended answer, and answering said first amended complaint, admits, denies and alleges as follows, to wit: "; also the whole of Para-

graph XII of said answer and the whole of Paragraph XIII of said answer. Filed May 28, 1945.
and that an order may be entered hereon ex parte.

Dated: This 2nd day of September, 1947.

TREASURE COMPANY, ~~LTD.~~, a
Corporation, and SAMARKAND
OIL COMPANY, a Corporation,
Defendants and Appellants

By Bodkin, Breslin & Luddy

By E. E. Hitchcock

Attorneys for Said Defendants and Appellants

JAMES M. CARTER

United States Attorney

AUGUST WEYMANN

Special Attorney, Lands Division,
Department of Justice

By A. Weymann

Attorneys for United States of America,
Plaintiff and Appellee

ORDER

Upon the foregoing Stipulation, and good cause appearing therefor, It Is So Ordered.

Dated: This 2nd day of September, 1947.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed Sep. 2, 1947. [182]

[Title of District Court and Cause]

STIPULATION EXTENDING TIME IN WHICH
TO FILE THE RECORD AND DOCKET THE
APPEAL. ORDER EXTENDING TIME.

It Is Hereby Stipulated by and between the plaintiff and the defendants, Treasure Company, a corporation, and Samarkand Oil Company, a corporation, through their respective counsel, that the said defendants may have an additional 30 days, to and including the 27th day of October, 1947, in which to file their record and docket the appeal herein, in their appeal from the Order of the above entitled Court by the Honorable Judge Campbell E. Beaumont, made and entered herein on the 4th day of August, 1947, refusing to dissolve and vacate said Court's Interlocutory Injunction granted herein January 7, 1947 and entered on said date in Civil Order Book 410 at page 477, as modified by its Order duly made and entered May [183] 22, 1947 in Civil Order Book 43 at page 277.

Dated: September 23rd, 1947.

JAMES M. CARTER

United States Attorney

JOSEPH F. McPHERSON

Special Assistant to the Attorney General

AUGUST WEYMANN

Special Attorney, Lands Division,
Department of Justice.

By A. Weymann

Attorneys for Plaintiff, United States of
America

Defendants, TREASURE COMPANY, LTD., a corporation, and SAMARKAND OIL COMPANY, a corporation

By Bodkin, Breslin & Luddy

By E. E. Hitchcock

Attorneys for Said Defendants [184]

ORDER EXTENDING TIME

Pursuant to the foregoing Stipulation, and good cause appearing therefor,

It Is Hereby Ordered that the time of the defendants and appellants, Treasure Company, a corporation, and Samarkand Oil Company, a corporation, to file the record and docket the appeal herein in their appeal in this case from the Order of the above entitled Court by the Honorable Campbell E. Beaumont, made and entered herein on the 4th day of August, 1947, refusing to dissolve and vacate its Interlocutory Injunction granted herein January 7, 1947 and entered on said date in Civil Order Book 410 at page 477, modified by its Order duly made and entered May 22, 1947 in Civil Order Book 43 at page 277, be, and the same is, hereby extended to and including the 27th day of October, 1947.

Dated: September 24, 1947.

C. E. BEAUMONT

Judge

[Endorsed]: Filed Sep. 24, 1947. [185]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 184 inclusive contain full, true and correct copies of Complaint in Condemnation; Declaration of Taking No. 1; Decree on Declaration of Taking No. 1; A Portion of the First Amended Complaint; A Portion of the Answer of Samarkand Oil Company; A Portion of the Amended Answer of Treasure Company; Conclusions of the Court and Decision on Motion for Injunction; Plaintiff's Exhibit No. 2 at Hearing of July 2, 1945; Petition for Injunction; Notice of Motion for Injunction and Restraining Order in Aid of Complaint in Condemnation; Answer of Treasure Company and Samarkand Oil Company to Petition for Injunction; Respondent Treasure Company's Exhibit A at hearing of June 10, 1946; Stipulation re Record on Appeal and Order with Notice of Ruling and Notice of Decision; Minute Order Entered January 9, 1947; Order and Decree on Plaintiff's Petition to Restrain Proceedings in the Superior Court of the State of California by Defendants Treasure Company and Samarkand Oil Company; Order Modifying Order and Decree on Plaintiff's Petition to Restrain Proceedings in the Superior Court of the State of California by Defendants Treasure Company and Samarkand Oil Company; Notice of Motion for Order Dissolving and Vacating In-

terlocutory Injunction Granted January 27, 1947; Affidavit in Support of Motion to Vacate Injunction; Minute Order Entered August 4, 1947; Notice of Appeal from Order Refusing to Vacate Decree of Injunction; Designation of Record by Appellants; Designation of Record by Appellee; Stipulation and Order re Designation of Record; Stipulation and Order Extending Time to File Counter-Designation of Record; Stipulation and Order for Amendment of Appellee's Designation of Record on Appeal and Stipulation and Order Extending Time to File Record and Docket Appeal which, together with copy of reporter's transcript of proceedings on June 10 and 11, 1946, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$26.15 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 22 day of October, A. D. 1947.

(Seal)

EDMUND L. SMITH,

Clerk

By Theodore Hocke,

Chief Deputy Clerk

[Title of District Court and Cause]

Honorable Campbell E. Beaumont, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Monday, June 10, 1946

Appearances:

For the Plaintiff: Joseph F. McPherson, Esq., Special Assistant to the Attorney General; and August Weymann, Esq., Special Attorney, Lands Division, Department of Justice.[1*]

For the Union Oil Company: Benjamin & Lieberman, by J. J. Lieberman, Esq., and Allan J. Greenberg Esq., 416 West 8th Street, Los Angeles 14, California.

For the Defendants Treasure Company, and Samarkand Oil Company: Bodkin, Breslin & Luddy, by Henry G. Bodkin, Esq., and G. S. Stilliman, Esq., 1225 Citizens National Bank Building, Los Angeles 13, California. [2]

Los Angeles, California, Monday, June 10, 1946.

10:00 A. M.

The Clerk: No. 2454, United States v. Land.

Mr. Weymann: Ready.

Mr. Bodkin: Ready for Treasure Company.

Mr. McPherson: May it please this Honorable Court, this is in the nature of an ancillary —

The Court: There are several matters here, several subdivisions of this proceeding with reference to the Playa del Rey case.

The Clerk: The first matter the court wishes to hear is the motion of plaintiff to strike amendments to answer of Treasure Company.

*Page number appearing at top of page of original Reporter's Transcript.

Mr. Weymann: If the court please, this is a motion by the plaintiff to strike the first amendment to the amended answer of the defendant Treasure Company, and to strike the amendment to the answer of the defendant Samarkand Oil Company.

The Court: If I recall it, at the last hearing when the order was made by the court, the Samarkand was to follow in the same way as the order regarding the Treasure Company; wasn't that agreed to?

Mr. Weymann: That is correct, your Honor. The amendment to the first amended answer of Treasure Company reads as follows: [3]

"That defendant alleges that World War II came to an end on or about August 9, 1945, and that none of the real or personal property sought by plaintiff's first amended complaint to be acquired by condemnation is any longer necessary for the prosecution of the war effort and that it would not impede the war effort in any degree for the court to deny plaintiff any relief whatsoever in this action."

Aside from the fact that no leave has been granted defendant to file this amendment, it must be apparent that the defense does not state any defense to plaintiff's action, because even if it were true, which it is not, that the war came to end on August 9, 1945, the determination of necessity for the taking of this property is one that rests exclusively with the acquiring agency, and one into which the court will not inquire. And that position is sustained by a long line of cases.

But if we follow out Mr. Bodkin's argument, it would follow that in every case of condemnation where the pro-

ceeding has not been consummated before that date the defendant may request the dismissal of the action. In carrying the *reductio ad absurdum* to its ultimate conclusion, even where title were vested a defendant may come in and ask the court to revest title, so the defense, the statement of the [4] position contains its own answer. There is nothing whatever in this defense. It is not a defense to plaintiff's cause of action under any of the authorities, and we are perfectly willing to submit it on the authorities cited.

Mr. Bodkin: If your Honor please, ordinarily if a demurrer is sustained without leave to amend, the court ordinarily says so; and if the court is silent upon the right to amend, it is ordinarily the rule that an amendment is permitted.

Now, it is true that as to that first defense which was set up in our former answer your Honor did not say, "Leave to amend is granted." Neither did your Honor say, "Leave to amend is not granted."

In this particular case, if the war is over, and while legally there is some question whether it is or not — I can't say whether it is or not — I would say where we are negotiating treaties and things of that kind, where we have brought our armies out of a country, while we may be occupying it as part of a peace program, war can be legally over. And we don't know whether the war is, although the fighting stopped at a certain time, and that is war as it is ordinarily understood.

We have filed our points and authorities on that point, and we would be willing to submit it on that point.

As I say, I didn't understand at the time, when your [5] Honor did not say, "Well, you may amend," that your Honor meant to say, "You may not amend."

In the State courts ordinarily if nothing is said about the matter, you are given a 10-day period within which to amend.

As I understand it, there is no motion made as to any of the other amendments to our answer.

Mr. Weymann: No motion as to any other amendments.

The Court: You have finished, have you?

Mr. Bodkin: Yes.

The Court: Have you anything further to say, Mr. Weymann?

Mr. Weymann: I have this further to say, your Honor —

The Court: You may be seated, Mr. Bodkin.

Mr. Weymann: The cases uniformly hold that power to declare the termination of war rests exclusively with Congress; that it requires a joint resolution of Congress or a proclamation by the President.

So far as the legal effect is concerned, the war is still existent, and there has been no termination of the war or the powers of the government under the war powers.

The Court: At the time of the ruling upon the motion the court was of the view that certain of the counts might well be amended, and it so stated.

I have generally felt since the new rules have been in effect that if a court grants a motion to dismiss that that is an end of the proceeding in so far as the pleading to [6] concerned, unless the party against whom the ruling is made will present a motion to the court and show the court upon the presentation of the motion that the court should permit an amendment.

It is different from the proceeding in the State courts, to which I had been accustomed for a great many years before I came to the Federal Court. There the court

would sustain a demurrer and fix a time within which an amendment should be made. That is, if in the judgment of the party against whom the ruling was made an amendment should be filed.

Here under a motion to dismiss I have always been of the view that the motion to dismiss, if granted, ended the matter as to the particular pleading, unless the court gave leave to amend, and that ordinarily such leave to amend would not be given except upon motion. But in this particular case here the court went over the various counts and stated that as to certain ones, such as fraud and lack of good faith, that the court was very jealous of such a statement, and that if there was anything to indicate that one of the government's officers had been guilty of any oppressive action, then the party complaining should have ample opportunity to present it. So that was the reason for the ruling.

Also, in this particular case where the court gave permission as to certain counts, certain causes of action, and failed to do it as to the other, under the doctrine of [7] *expressio unius est exclusio alterius*, it would imply that the court did not intend that leave should be given to those counts to which no reference was made, and that was the ruling of the court.

I think the motion to strike should be granted, and it is so ordered.

Call the next one, Mr. Clifton.

The Clerk: Motion of plaintiff for injunction and restraining order.

Mr. McPherson: Máy it please your Honor, this is a proceeding in the nature of an ancillary proceeding in aid of condemnation suit whereby the government as petitioner seeks to enjoin and restrain Samarkand Oil Company and the Treasure Company, two of the defendants named in

the condemnation proceeding, from further prosecuting four actions now pending in the Superior Court of Los Angeles County in the State of California.

Those four suits are against the Union Oil Company as sole defendant.

The Union Oil Company is likewise a party defendant in the condemnation proceeding.

Two of the suits in the State Court are captioned and sound as actions in claim and delivery, under the California statute governing modified proceeding in replevin.

The actions are in the usual form and seek the recovery [8] of what is alleged to be personal property, which it is claimed there under oath was seized and wrongfully taken by the Union Oil Company from the plaintiffs, and in the alternative for damages for detention.

Two of the actions are captioned for damages, and though they sound in trover are in my opinion, and it will be our contention, really such as falls within the inhibition of the statutes enabling this court to protect and preserve its jurisdictions, for while they sound in trover and are captioned actions for damages they are, nevertheless, actions to recover for alleged wrongful extraction of oil from the property by the Union Oil Company, the property being a portion of the lands condemned in this proceeding, and the Union Oil Company being the operative custodian for the government.

I think it would simplify the presentation materially and shorten it somewhat if I would name a few dates.

The original proceeding in condemnation was filed in this court in September of 1942. The court, I think your Honor, signed the order, immediately signed an order of possession, since the action was under the War Powers Act. The marshal served the order and posted the property in accordance with your Honor's direction and put

the Defense Plant Corporation in possession of the property. The Defense Plant Corporation thereafter and pursuant to an agreement which will be introduced as a part of and in aid of his petition, in turn, [9] put the Union Oil Company in operative custody of the property, and it has since that date operated all of the property being condemned, which includes, as your Honor knows, a great deal of property in which the defendants Samarkand and Treasure Company have no interest.

The interests of these two companies, as I understand the proceeding, in the lands and property being taken, is that of an oil lease on two small parcels. One of those parcels, I believe, was in production at the time of the seizure, and both of them had been drilled.

There was in October of 1942 the usual declaration of taking filed with the appropriate order on it. Since the language of that declaration is material, I should like to read one paragraph of it. The lands taken in the estate are described in that declaration and in your Honor's order as follows: For said lands with all buildings and improvements thereon and all appurtenances thereto, the property was taken "for the use of the Reconstruction Finance Corporation, a Federal Corporation, acting in behalf of Defense Plant Corporation, a Federal Corporation, acting under a purported order for immediate possession issued by * * * this court."

That is as it is defined by the defendant in their first answer.

Treasure Company immediately filed an answer to the petition in condemnation in which they asserted, as I just [10] read you, that the taking was for the purpose of these companies acting for the government.

The gist of the defense, which I will not touch on here at great length, was primarily an attack upon the validity

of the taking and upon the valuation of the property, as well as, I think, the mistaken idea that under the California rules of practice it was incumbent upon the government to determine and fix compensation for the taking as required by the California Constitution before the condemnation was effective.

There was, of course, a dissertation on the value of the property and a claim for its taking in the amount of approximately \$1,100,000.00.

The Treasure Company thereafter filed a number of motions, including a motion to vacate your order of possession; a motion to advance the case on the calendar, and things of that kind; all of which are in the clear recognition and submission of this court's jurisdiction and submission to it of determination of the question.

There was an ineffectual effort made to amend the petition in condemnation, since as has been pointed out many times, and will again be, the description of the property taken in the complaint does not expressly include personal property, but describes the parcels by metes and bounds, and obviously includes only the real property and appurtenances [11] as I have read to you.

Thereafter and on January 12, 1944, with leave of court and consented to by the answering defendant, the first amended complaint in condemnation was filed, and that complaint specifically included personal property, including among others the personal property of the answering defendant.

Since that time there have been several amendments to the Treasure Company's pleadings, and there have been answers filed and amendments to the answer by the Samarkand Oil Company. So that while it may not be as finely cast as the pleadings will be before the case is ready for trial, nevertheless for our purpose the case is

at issue and has been for many months prior to the filing of these four suits which we seek to enjoin.

In order that you may have a little more background of it, before the first amended complaint was filed there were two other actions filed in the State Court of California by these same plaintiffs, both actions for claim and delivery. We sought before Judge McCormick to enjoin the prosecution of those suits and were unsuccessful for reasons which I will touch on here later.

The four suits with which we are now concerned, however, were all filed, all four of them, long after the amended complaint including both real and personal property had been lodged in this court, and long after the case for jurisdictional [12] purposes was at issue, and after this court's jurisdiction over the person of these defendants and the question of compensation had been fixed both by law and by voluntary pleadings.

According to the formula pursued by Judge McCormick, we stated four questions for determination, two of them were considered and passed on by him, and while with every deference to that very learned judge we are not in strict accord with the determination that he made on the first application, nevertheless we feel that as applied to the proceeding before your Honor the test is the same and the rule would be applicable whether or no it was to the first application.

The Court: In other words, if I get it correctly, that is the law of the case, is that what you have in mind?

Mr. McPherson: Yes, whether it be on the proper theory or not as applied to the first two suits. Judge McCormick contended himself with ruling that first in time is first in right; and concluding as he did that the State Court proceedings that he was asked to enjoin had been filed before the amendment to the complaint had been

made in this court, that the jurisdiction of the State Court had vested and that the rule of first in time is first in right applied, and that he would not restrain their jurisdiction.

However, as I have just shown by the statement of the facts, all four suits now pending in the State Court were [13] filed long after the amendment was made, and in our opinion long after the jurisdiction of this court had attached.

The reason for that is this: In addition to the pronouncement of Judge McCormick that first in time is first in right, we take the further position, and the record here will show you that the present actions over there, the two which are for claim and delivery, and for the record are actions 507385 and 507386 — I am mistaken about that, they are 505967 and 505968 instead of the numbers I gave, they are the actions for claim and delivery, in addition to being second in time under the rule announced by Judge McCormick, they are actually, contrary to the allegation, and as the record here will show you, not for the recovery of personal property wrongfully detained, but are for the recovery of the operational equipment which under the law of California is a part of the real property, and in our opinion was taken and effectively condemned by the first complaint and were not dependent upon the first amended complaint which was filed some time later.

Actions 507385 and 507386 are the two actions captioned Actions for Damages, and sound in trover.

We take the position that they are such as come within the inhibition of the jurisdictional statute for though they sound in trover they are, as I have indicated before, actions for the alleged wrongful extraction by the defendant Union [14] Oil Company from leaseholds of the

Treasure Company and Samarkand Company, which leaseholds, that is, the lands themselves and their appurtenances, which would include operational equipment, comprised and were specifically included in and formed a part of the lands first condemned by the original complaint.

Taking up first the two actions for damages so-called. Lewis under the law of eminent domain has this definition:

“The term ‘land’ or ‘real estate’ as used in reference to the right of eminent domain includes everything which is embraced by the term where used in its legal sense. —

The Court: Are you just going over one of the authorities you presented before in your points and authorities, Mr. McPherson?

Mr. McPherson: No, your Honor. Just a definition of what we took only. I am not discussing any case.

The Court: Had you given that definition?

Mr. McPherson: Yes, sir.

The Court: In your points and authorities?

Mr. McPherson: Yes, sir.

The Court: You don't need to argue anything that is in your written brief or points and authorities.

Mr. McPherson: All right, sir. The only point I wish to make there in making that definition is that that is the [15] rule of the California cases and is supported by the three cases which we cite in this brief as being the rule of property in California.

The Court: I think for the purpose of this record you had better complete your definition that you were reading. I interrupted you.

Mr. McPherson. The term land as used in a condemnation proceeding includes not only the soil but also

everything attached to it, whether attached by the course of nature, as trees, herbage, water, mines and minerals, or by the hand of man, as buildings, fences, or other structures.

The California cases that bear on that point are three in number. One of them is the famous bank vault case as your Honor knows, which holds that notwithstanding by the terms of the lease the property was personalty as between landlord and tenant, as between a condemning party under a claim of paramount title, such as a condemnation proceeding, the trade fixtures and appurtenances are real property and are taken and condemned when the land is described.

The two actions for claim and delivery are, it seems to me, obviously covered by Judge McCormick's order, and I will not pursue those further.

The difficulty with this case, as I see it, from the point of view of analyzing these pleadings, is the inconsistent and difficult position that defendant's counsel and his client [16] take with respect to who seized this property.

There are perhaps 25 or more specific allegations in this court under oath, before these proceedings were filed in the State Court, all to the specific effect that the government seized his property, claiming of course that it was either illegal or wrongful or ill-advised, or what-not, but nevertheless that the government seized his property and asking compensation. Whereas in the State Court, not only in the two first actions filed, but in these four new ones, the positive allegation is made, likewise under oath, that the property was seized and possessed and retained by the Union Oil Company, as though it were a principal.

Now, we take the position and urge strongly that however ill-advised the original seizure may have been pur-

suant to your Honor's order of possession on the original complaint as affects the personal property that fact is no longer in this case, nor is the determination whether it was broad enough to cover personal property of any moment, because the property that we are now concerned with in these four actions is in two cases oil, which under the law is clearly a part of the real estate, and the operational equipment, which under the decided cases of California, as well as the federal decisions that have passed upon it, are likewise a part of the real property.

So that whether or not certain personal property that [17] may have been covered by the first two suits in the State Court was effectually and effectively condemned in September of 1942 is of no consequence.

This property which forms the subject-matter of these four suits was taken by the law of this court and this State on September 28, 1942, and certainly was taken when the declaration of taking was filed and the deposit made in this court, under any stretch of the imagination, and the effective date of the taking resulting from the filing of the declaration of taking was as your Honor has ruled with the other judges time and time again as of the date the government entered into and seized the possession of this man's property.

Now, if that be true, then under the Constitution and under the Tucker Act the remedies which attend that seizure are exclusive. They are either in the Court of Claims, under the Tucker Act, or they are as we claim exclusive before this court and this judge, because it was your order which put the government into possession of this property.

We take it it is axiomatic that this court, if you had jurisdiction of this action in the first instance, as to which

there could be no dispute, this court will fix all of the consequences of what was done pursuant to your Honor's order, whether it was done rightfully or wrongfully. The attendant circumstances are within your power to fix and within your [18] power to define and to remedy.

Now, I wish to make one particular observation. It was urged strenuously before and is commented on by Judge McCormick in his order. The section of the code which prohibits the Federal Court from signing injunctions in certain cases was touched upon and discussed with him with reference to a matter which is covered in the brief and which I shall not comment on. That is the reluctance that the court has to make such an order restraining proceeding in a sister state court. Nevertheless, we have found and cite your Honor a number of cases, and I think they are particularly pertinent, to the effect that so far as we have been able to find, and it is stated by some of those cases, there never has been an instance where the Federal Government was the moving party and asking for the issuance of an injunction that Section 265 of the Code was even suggested as being a defense to that motion.

The reason is an obvious one. When the Federal Government comes into court to condemn property for a war purpose or not, even under the general condemnation statute, it comes as a sovereign, with the inherent power of a sovereign, which is eminent domain. They don't come as an ordinary suitor.

The cases have decided time and again that you couldn't even counterclaim in such a suit. All of the immunities which attend that act of a sovereign remain in a condemnation [19] suit, as distinguished from proceedings where the government comes and sues as an ordinary suitor. So Section 265 does not apply, provided this one

exception is met, and it is the only one that is put in the books with respect to an application by the Federal Government, and that is that the remedy is not clear and sufficient. In other words, if there is any other way in which the government's rights can be protected other than by the issuance of the injunction, they will not issue it.

There is only one case in which it was refused, and that as you remember was the Dewar case.

So it seems to me that none of the cases cited and relied upon either by Judge McCormick or any of the briefs which I have seen in this case meet the question of this court having had before it on voluntary submission the Federal Government in the exercise of the power of eminent domain to permit any other action to be filed as a corollary or as a collateral attack upon the validity of what your Honor did in connection with that application.

The Court: Mr. McPherson, then did Judge McCormick make his decision upon the principle that you have announced, first in time is first in right?

Mr. McPherson: Yes, sir.

The Court: Or did he do it upon that and other principles? [20]

Mr. McPherson: He mentioned a number of other principles, but the reading of his order, it seems to me, was that he turned the case on the question of first in time.

So that your Honor will get the purport of that, we contended, and I think properly, that the amendment to the complaint related back to the date the government took possession and the seizure by the marshal under the order of this court —

The Court: I am not speaking of what you contended, particularly, but what he used as the basis of his conclusion.

Mr. McPherson: Then he comments on the government's contention with respect to that, and uses the language first in time is first in right, and that in my opinion was the controlling point in his opinion, and he also commented on this Section 265 of the Code which prohibits the issuance of an injunction by the Federal Court in certain cases.

There is another reason which was not argued to Judge McCormick, because at that time the Union Oil Company did not join in the application for the injunction, and there were only two cases filed. Now there will be six when this is disposed of. The Union Oil Company has joined with the government in this application for injunction. It is upon the theory of multiplicity of suits.

We have cited you, and I will not take the time to comment on them, a number of cases holding that where as in [21] this instance there have been a number of harassing suits, that the section has been time and again held by the Federal Courts not to restrict the issuance of an injunction in such a case.

We have another point which was not argued to Judge McCormick, and which I feel is decisive in the case, and that is the rule that our Supreme Court has committed itself to that where an act of a federal agent has been ratified and approved, as in this instance the seizure of this personal property, — though I say it is not particularly material at the moment, because the property we are now struggling about was part of the realty — but assuming you shouldn't agree with me, and hold it was personal property, nevertheless this rule would apply,

where a federal agent seizes such property and his act of seizure is ratified, as in this instance by the amendment and the proceeding for condemnation in this court, that thereafter the agent who seized that property for the government may not be pursued.

We have had a number of cases in the Supreme Court in which that point was squarely and fairly decided. The leading case on the subject came from the Court of claims, and was not cited for quite a long time until after the court got to the case of *The Paquete Habana*, which was an alleged improper seizure on the high seas. It was a libel. The libel was dismissed as being illegal and improvident as well, and the [22] Supreme Court, Mr. Justice Holmes writing the opinion, held as it was held by our Court of Claims in this very early case cited in this brief, that when an act of a federal officer, or agent, has been ratified by the sovereign, that thereafter the agent may not be pursued. The remedies attendant upon such an act are those fixed by law governing the rights of action against the Federal Government and no more.

The reason for that, of course, is very obvious.

Much has been said here and will be said, I am sure, by my opponent to the effect that all he is asking over there and all he can get, and all he got in the first two suits which actually went to trial and which were appealed and compromised on appeal, is a money judgment, and that for that reason your Honor shouldn't endure yourself in restraining an action, the effect of which is to result in a claim for damages and a money judgment.

But is that true? Let's see.

The Court: Have you covered that in your written brief and points and authorities?

Mr. McPherson: Only one phase of it and one phase only, and that is if the government stands idly by and permits the Union Oil Company, who is under this contract that will be shown your Honor to operate this property for the account of the government, stand by and permit them to be used and answer in damages, in the actions for claim and delivery for [23] the payment of damages, the title would vest in the Union Oil Company, theoretically at least, the government would then be and this court would be embarrassed by a prior independent adjudication of the value of the property. Would we be bound to accept the State Court's determination of value, or would we here re-litigate? And if it be, though chances are remote, but if it be that the Union Oil Company should recover less here than they were required to pay in the State Court, what would the position be?

On the other hand, the government is faced, and for this reason alone it seems to me we ought to have the injunction, the government is faced now with the suit against its operating agent, a person it put into custody of this property, to stand by and determine whether it shall appear and defend in the name of the Union Oil Company, as was done in the first two suits, or come here as we come now and ask this court to prevent that suit, because the court would not permit the government to be sued in the State Court if we were named as the defendant.

By the same token the court ought not under the evidence which will be offered to you, and about which there is no dispute, should not permit the agent of the government to be sued for the same reason. That is, that the government is the primary and sole real party in interest, the damages would be payable out of the treasury of the United States, and the [24] valuation fixed over

there would be the valuation fixed here, if by chance it should be the same amount. If not, then an embarrassing situation would have existed and this court's jurisdiction, it seems to me, would have been flaunted.

I have only this to say in conclusion. Of course it isn't fair to the government to have one of its agents sued, as here, upon a claim of tort. That isn't going to wreck the government, but it seems to me that when the government comes into this court in an orderly manner and condemns property, and this court makes an order putting the government in possession, thereafter an amendment was made to correct what probably was a mistake, unquestionably was in my opinion, but nevertheless other people don't agree with me on that, that thereafter this court should not permit a suit or a series of suits, such as we have here, to be filed against the agents of the government who are acting upon the authority of the statute law with the order and approval of this court. If such is the case the government could never, in my opinion, secure as an agent a person of responsibility like the Union Oil Company. And, without more, if as here the government submits itself to your jurisdiction to fix the consequences and to pay the damages which attend the seizure of property under your authority, then these people who are affected by that seizure ought not to flaunt your Honor's jurisdiction, ought not to go to other courts, but ought to come into this [25] court as they have and stay here until their rights are fixed. And if it be that the Federal Government does not fix and pay a proper amount of compensation to these owners, that is a matter which this court would be the judge of; that is a matter peculiarly within your jurisdiction, and a matter, I am sure, that no complaint could be made about.

Mr. Lieberman: Would your Honor prefer to hear us first representing the Union Oil Company, or after Mr. Bodkin gets through? We are here in connection with the motion for leave to join with the government in seeking this injunction. Whatever your Honor prefers as to the order is all right with us. I just wanted your Honor not to overlook the fact that that is before you also.

Mr. Bodkin: If your Honor please, may I suggest that the Union Oil appeared in this case two or three years ago by their counsel; now Mr. Lieberman's firm comes in and he appears for Union Oil Company without any substitution of attorneys. He is filing a petition for the Union Oil Company, who have already appeared by their own counsel. I think it is a little irregular.

The Court: What about that, Mr. Lieberman?

Mr. Lieberman: Frankly, the thought had never occurred to us about a substitution of attorneys. We are here appearing on one matter, and that is this special proceeding. Union Oil Company is of record by other counsel as defendants in [26] respect to a certain parcel in the condemnation. Now we come here only in connection with this special proceeding, because Union Oil Company has been sued in the State Court by these parties on another action in which we are attorneys of record, not the attorneys of record in the condemnation action.

The Court:

In other words, the Union Oil Company has more than one group of attorneys?

Mr. Lieberman: We can explain that, too, because the fact might as well be clear. They have their own counsel in their own office headed by Mr. Griffin, and we appear as their attorney in this suit because —

The Court: You are associated with Mr. Griffin?

Mr. Lieberman: No, I am not. I happen to be agency counsel for the Reconstruction Finance Corporation, so whenever the Reconstruction Finance Corporation has any litigation it calls on me to appear, and I have my firm appear then.

The Court: I am sure there is no real difficulty here. The only thing about it is it has been called to the court's attention. I didn't know of the other appearance.

Mr. Lieberman: The only reason they have two sets of counsel in this particular set of proceedings is that as agency council for R. F. C. we feel it our duty to defend the Union Oil Company, which has been made a defendant in these actions only because of its agency for the Reconstruction [27] Finance Corporation.

Mr. Bodkin: If your Honor please —

The Court: Mr. Lieberman, here what is your connection, then, with the Union Oil Company, as far as this particular proceeding is concerned?

Mr. Lieberman: I am attorney of record, my firm and I are attorneys of record in the State Court in the actions that we are now appearing before your Honor to ask to stay.

The Court: Then have you been authorized by the Union Oil Company, or are you simply appearing on behalf of the Reconstruction Finance Corporation, which is it?

Mr. Lieberman: I have been authorized by Union Oil Company, because the petition is a verified petition, verified by one of the officers of the Union Oil Company.

The Court: What were you going to say?

Mr. Bodkin: If Mr. Lieberman is authorized to appear, I am certainly glad to have him appear.

The Court: I am quite sure of that.

Mr. Bodkin: I just wanted to get the matter straight.

The Court: I think we will take a recess of a few minutes.

(A recess was taken.)

The Court: You may proceed, Mr. Bodkin.

Mr. Bodkin: Before proceeding with my argument, there has been no evidence introduced at all in this proceeding — [28]

The Court: Mr. Bodkin, the court will ask you, as it has Mr. McPherson, not to dwell upon any matters which have been covered in your written argument.

Mr. Bodkin: I don't intend to do that. If I do allude to them at all it will be very brief.

I was saying I have before me a transcript of the proceedings before Judge McCormick in which certain documents were placed in evidence before Judge McCormick in that proceeding, and I simply want to have the same matters which are relevant here in this case.

The Court: May I ask you do you recall why it was that Judge McCormick happened to hear the other matter? Was it before it was transferred to me, or was it because I was away?

Mr. Bodkin: You were at San Diego, and you called Judge McCormick and asked him if he would hear the matter in your absence, and as he was familiar with this matter I assumed perhaps he would hear this during your absence, but he didn't see fit to do so.

The Court: Was he requested to hear it at that time?

Mr. Bodkin: In other words —

The Court: When I was recently away?

Mr. Bodkin: Yes, I think I suggested, or one of us suggested that he might hear it, and he said no he would prefer to have it sent back here.

The Court: That is all right. [29]

Mr. Bodkin: I may say there are two sets of law suits in this case; the one involves oil, oil taken from the ground which the government claims to have condemned, and which condemnation suit we are attacking in our answers which have been filed in this case. We have not set down, nor attempted to set down those oil cases, because of the fact that we realize oil is a part of the land, and if the land was condemned then the oil was condemned. But there is a statute of limitations of three years, and before the three years was up from the time they first went into possession and took over the oil, we then filed a law suit and we let it lie some time and then had service made, but we have not attempted to set and we will not set our attempt to try those two cases until this other matter is out of the way, and if your Honor holds that the condemnation is a valid one, then of course there will be no activity in the State Court.

The Court: That is as far as the oil suit is concerned?

Mr. Bodkin: Yes. On the other hand, if your Honor should hold, as we hope your Honor will hold, that these proceedings were regular and proper and that the court did not have jurisdiction, then we having elected, as we had a right to elect, to sue the principal or the agent, we elected to sue the Union Oil Company, and if this court should hold in its determination that the court did not have jurisdiction [30] in so far as the land was concerned, then we will proceed to trial in the State Court as to the oil, but not otherwise.

The Court: And you will have the protection of having filed your action before the expiration under the statute of limitations?

Mr. Bodkin: Yes. Otherwise we would have to go back to Washington and file our action in the Court of Claims, which we did not desire to do, and we felt that the Union Oil Company was sufficiently sound financially that we would be just as well off to sue them as the R. F. C., which perhaps may be out of business by that time, or to sue the government, which may have plenty of debts, by the way, at that time.

So there is no need of an injunction so far as those oil cases are concerned. We set up in our answer that we don't intend to proceed, and we don't. There is no use of building up straw men and knocking them down.

We at this time ask your Honor to consider as in evidence the order for the immediate possession of real property. That is the original order, which your Honor signed at the time the suit was brought, and which stated it was an order for —

The Court: I think it has been referred to by Mr. McPherson, so that you both agree that it may be referred to by the court.

Mr. Bodkin: Yes.

Mr. McPherson: Yes, your Honor. [31]

Mr. Bodkin. Then we ask that the court consider on this motion, and we offer it in evidence, the original resolution of the Defense Plant Corporation and R. F. C., that is a resolution which provided for the taking of real estate only. And the resolution, I believe, was September 18, 1942. It was upon that original resolution and instructions to the Attorney General to file suit that this present proceeding was filed. You will so stipulate that may be considered?

Mr. McPherson: Provided the amendments to that resolution are also included.

Mr. Bodkin: We will get them all in.

It is my recollection it was September 18th, but whatever the date is. I am sure it is September 18th.

Then there was an amendatory resolution of the R. F. C., I believe, in October, 1942, but, again, that had nothing to do with personal property, it was real property, and we ask that that be considered.

Is that agreeable to you, Mr. Weymann?

Mr. McPherson: Yes, all of the amendments to that resolution.

Mr. Bodkin: All right. Then there was another resolution on October 4, 1943, which we offer in evidence and ask that it be received, which is a resolution, amendatory resolution, which first mentions personal property. And we direct your Honor's attention to that resolution, that it does [32] not ratify the taking of any property thereto.

We ask that your Honor examine that carefully.

And we also ask that the court consider a letter of instructions to the Attorney General directing the filing of the suit for the condemnation of personal property, which letter is dated October 6, 1943. The amendatory resolution of October, 1942, was October 19, 1942.

We also ask that your Honor consider the decree or order of taking which was signed by your Honor in, I believe it was, October, 1942, which referred solely to real estate, and also the decree of immediate possession which your Honor made on September 28th and 29th, 1942, which again refers exclusively to real estate.

We ask that your Honor consider the inventory of the property, of personal property, which is sought to be condemned in the present action.

In the resolution adopted by R. F. C. or Defense Plant Corporation, I forgot which, either one or the other, but

the only resolution on the subject, Resolved that it was necessary to take certain personal property, a list of which was attached thereto, and in the list attached thereto there were two lists, one property necessary to be used in the project, and the other property which was not deemed necessary to be used. I take it it will be stipulated that as to the resolution of October, 1943, that the same list, that is, the [33] original list containing the same headings were attached to the original resolution as are set forth in the inventory filed in connection with this law suit, is that right?

Mr. Weymann: Yes.

Mr. McPherson: The inventory filed in connection with the law suit is a copy of the inventory attached to the resolution.

Mr. Bodkin: With the same headings on it?

Mr. McPherson: Complete as it was attached.

Mr. Bodkin: We ask your Honor to consider on this motion the original complaint filed on September 28, 1942, which refers only to real estate and makes no mention of personal property whatsoever.

The Court: Have you finished with the preliminary matters?

Mr. Bodkin: No, I have some others. Reference has been made, if your Honor please, to the fact that these other law suits were tried. We filed law suits after waiting from September 28, 1942 until November 18, 1943, we filed an action for two separate actions, one on behalf of each corporation, for the recovery of certain personal property. In that particular case the R. F. C., the Defense Plant Corporation, appeared, that is. in the State Court they appeared before Judge Palmer and sought to abate those two actions. Judge Palmer refused to abate them. A copy of Judge Palmer's [34] decision

in that proceeding is in the files, and we ask that that be considered as well by your Honor, as we feel that it is the law in the case so far as these people are concerned, because R. F. C. and Union Oil Company were parties to that law suit. Then when Judge Palmer refused to abate the action, the government appeared in this case and they served notice upon us and upon counsel for the Union Oil Company, seeking to enjoin the trial of those two cases. The cases were tried before — that is, the injunction proceedings took a day's time before Judge McCormick, he took it under submission about three months, and he filed a lengthy opinion. There is in the file, I am sure, the original of the arguments made at that time before Judge McCormick, and much of what was said there is equally applicable here. We ask if your Honor will have an opportunity to read that, because I am sure the original was left with Judge McCormick.

The Court: You mean the original of the transcript of the proceedings before Judge McCormick?

Mr. Bodkin: Yes; it will show that practically the same situation was before Judge McCormick that is before your Honor.

The Court: Mr. Bodkin, do you think this is essentially the same as the matter that was before Judge McCormick?

Mr. Bodkin: There is just one difference.

The Court: Do you think Judge McCormick hesitated [35] because I was away and hadn't requested him to hear this, or did he indicate that he didn't want to proceed?

Mr. Bodkin: I think he was extremely busy at the time, and he said he didn't recall anything about the case. We are certainly very happy to proceed here.

The Court: I understand all that, but at the same time if the matter is one which was before Judge McCormick and you are now asking the court to consider the entire transcript of the proceeding before Judge McCormick, it seems to me that it is almost a duplication.

Mr. Bodkin: I don't think it will be necessary to go that far, if your Honor, please, because we have the opinion of Judge McCormick which we were just about to offer.

The Court: Yes, but you asked me to read the entire transcript.

Mr. Bodkin: I will withdraw that request, if your Honor please.

We then ask your Honor to consider the opinion of Judge McCormick on that, which we say is the law of the case on that situation.

It has been suggested that the only, the main turning point of the case was the fact that we had filed our law suit in November, 1943, and the condemnation of the personal property was not filed, the suit was not filed until January, 1944, and that therefore the State Court first had jurisdiction, [36] that it was an action in rem or quasi in rem, and that being the case that is, of course, one of the points upon which the case turns. But if your Honor will refer to the decisions you will find —

The Court: I would, of course, refer to the decision of Judge McCormick.

Mr. Bodkin, the court really overlooked the statement made by Mr. Lieberman as to his matter, and I thought if you had finished with the preliminary matters I would refer to the motion of the Union Oil Company. Have you finished?

Mr. Bodkin: No, I have not. I wanted to offer in evidence that judgment and, also, if your Honor please,

there were these two cases tried before Judge Palmer, tried upon the merits, claim and delivery actions, and I have a copy of the findings of fact and conclusions of law and of the judgment in that case, which we deem material. I may say that case, the two cases in which we received a substantial judgment, Mr. McPherson said an appeal was taken. No appeal was taken, but they paid us off and settled on a substantial sum before a notice of appeal was given. We have a copy of the findings in the case of *Treasure Company, a Corporation, v. Union Oil Company of California, a corporation, and Reconstruction Finance Corporation, a Federal Corporation, Successor in Interest to Defense Plant Corporation*. The findings were identically the same except as to the property of the [37] two defendants. The findings were identically the same. And while these are not certified, I am offering in evidence and I understand counsel will stipulate that this carbon copy may be used in lieu of a certified copy.

Is that agreeable?

Mr. Lieberman: That is agreeable.

Mr. Bodkin: I particularly direct your Honor's attention to the fact that it says:

"On the said 28th day of September, 1942, at and on said Block 33 of Tract 9809 in said County of Los Angeles, without the plaintiff's consent and against its will, a deputy United States Marshal, without any authorization from any source, without process of court related to said personal property and without direction from any agency of the United States Government falsely and wrongfully and wilfully assumed dominion over the said personal property, and wrongfully and wilfully took possession thereof and wrongfully delivered said personal prop-

erty to the defendant, Union Oil Company of California, a corporation, which said defendant on said date and at said place without right or authority wrongfully and wilfully took possession of said personal property and thereafter continuously and until January 12, 1944, wrongfully [38] and wilfully held possession thereof and detained the same and wrongfully prevented the plaintiff Treasure Company, a corporation, from taking possession thereof."

That was the finding of the court. We offer this in evidence.

The Court: I believe there is no objection, is there?

Mr. McPherson: No objection, your Honor, except we call the court's attention to the fact that the judicial ascertainment there is not binding on the United States.

Mr. Bodkin: This is an action brought on behalf of R. F. C., at the behest of R. F. C.; R. F. C. was a party to that law suit there, and it is a party to this law suit, and the Union Oil Company was there and the Union Oil Company is here; everybody was there except the United States of America, and they permitted this governmental corporation —

The Court: Well, let the two of them be marked as Defendant Treasure Company Exhibit A on this motion.

You have no objection to Mr. Lieberman's motion to join?

Mr. Bodkin: No objection whatsoever.

I may say before I start to argue, I believe they have a copy of the operating agreement which Mr. Lieberman would like to introduce in evidence. We have no objection to this copy being used in the place and stead of a certified copy.

Mr. Lieberman: These offers I will now make, your Honor, [39] will complete the presentation of evidentiary matter that your Honor is asked to consider or record matter.

The Court: I don't think I could hear what you had to say.

Mr. Lieberman: First there is an affidavit of Mr. Paul —

The Court: No. Read it, Mr. Goldstein.

(The record was read.)

Mr. Lieberman: First, an affidavit of Paul M. Lee in support of our petition.

The Court: Your petition in support of what?

Mr. Lieberman: Our petition for injunction here. In other words, we are applying for leave to join in the injunction.

The Court: That has been granted, the leave to join in this motion that is made by the government. Mr. Bodkin states that he has no objection.

Mr. Lieberman: These two affidavits are in support of the application as it now stands. In other words, the joint application for an injunction. Then in addition to the two affidavits we offer this carbon copy of a type-written copy of an operating agreement between the Defense Plant Corporation and Union Oil Company, which Mr. Bodkin stipulates may be used in lieu of an original, and I think Mr. Bodkin will also stipulate with me that by a letter from Reconstruction Finance Corporation to Union Oil Company it was agreed between the [40] parties that this agreement though dated August 25, 1943, should relate back to the time of the original taking by Reconstruction Finance Corporation on September 28, 1942, on which date custody was by it turned over to Union Oil Company.

Do you so stipulate?

Mr. Bodkin: I will stipulate there is a letter in evidence to indicate — there was a letter written.

The Court: Let the proposed copy be received and marked as Plaintiff's Exhibit 1 in this proceeding.

Mr. Lieberman: Does your Honor want to hear anything further from me?

The Court: Not anything further. I just wanted to take up the matter of your motion to join. That has been agreed to and so ordered.

Now, you have offered this exhibit which the court has received and ordered marked Plaintiff's Exhibit 1 in this proceeding.

Now Mr. Bodkin.

Mr. Bodkin: I will be brief, if your Honor please. I may say we have filed some points and authorities. We filed additional points and authorities Saturday.

The Court: I haven't seen those.

Mr. Bodkin: They were sent in Saturday.

In the case here before us we find that on September 28, 1942, a deputy United States marshal, without any process of [41] court whatsoever, went out to the oil fields covered by our oil leases, the property owned by our clients, and simply took possession, ran everybody off. Then when they did so, they had no order — your Honor had given an order that they might take possession of real estate, but nothing at all about personal property. The Union Oil Company then came in and without any authority from any governmental agency, as found by Judge Palmer, took possession of the personal property, and they retained it unlawfully until January 12, 1944. I say "unlawfully" because under the War Powers Act, at the time of filing a complaint to condemn either real or personal property, as the law now

stands and stood on September 28, 1942, and stood on January 12, 1944, the government would have the right to take possession of personal property; and while there is no statutory provision as to personal property about depositing any money to protect the owners, the statute says, in spite of any other law, they have a right to take possession of that personal property at the time the condemnation suit is filed or at any other time thereafter. So that on January 12, 1944, when this suit was filed for the first time seeking to condemn personal property, then for the first time did R. F. C. or the government have the right to take personal property. Any taking prior thereto was unlawful.

And commenting upon that Judge McCormick said:

"The fair preponderance of the evidence before us establishes, we think, that the present claim that it was the intention from the inception of the project to acquire the personalty is an after-thought conceived to avoid possible consequences of the seizure of September 28, 1942."

In other words, when this amended complaint was filed, although the Attorney General knew that the resolution of September 18, 1942, did not authorize the taking of personal property, the amended complaint which was filed on January 12, 1944, alleged that it was taken, that the property was taken on September 28, 1942 pursuant to an intent to them and there take it, or words to that effect. If your Honor will refer to the language in that amended complaint filed January 12, 1944 you will see that the allegation there, of course, is contrary to the unquestioned facts in this case.

They claim a question of ratification, and Judge McCormick held there was no ratification. Judge McCormick said:

“Thus we find that the earliest effectual and authorized acquiring of the personal property by the government was subsequent to the acquiring of jurisdiction over the same res by the State Court in the recovery actions pending therein.”

Therefore, a finding of Judge McCormick was that until January 12, 1944 the taking and the withholding of property by Union Oil Company — and I don't care whether they are acting [43] as an agent or acting individually, the thing is that they held that property unlawfully for that length of time. If they did not have a legal authority to take the property in the beginning on September 28 or 29, 1942, when they took hold of that property, if they cannot show that they were legally authorized to take that property, a cause of action then arose in favor of the owners of that property, and that cause of action cannot be taken away from the people who suffered that loss.

I liken this case very much to that of a deputy sheriff who goes on out thinking that there is a process which authorizes his boss, the sheriff, to take over an automobile, but the process is fatally defective, and the deputy sheriff picks up the automobile and takes the deposits that in a storage garage, and the owner of the property comes along and says, “here, I want my car.”

“I am sorry, we are holding this for the sheriff.”

Where is there any legal authority?

And of course there is no legal authority. Of course, if the storage man acting on behalf of the sheriff was acting on legal process, he could not be sued. But if he

withheld that property, if he withheld that property without lawful authority, even though he thought he was doing right, there is a cause of action which would arise and continue in being so long as he kept that property. [44]

Counsel argued before Judge McCormick, as they are arguing here now, that this proceeding will interfere with the process of this court. Why, it is going to embarrass it terribly.

As a matter of fact, when we got our judgment for \$80,000.00 for the land, for the property, we settled, I think, as I recall it, for \$70,000.00. The money was paid to us not by Union Oil Company, but R. F. C. We got a government warrant for that amount. So the government paid us for it. And certainly if the government paid us for it, and the government is seeking to condemn it, there will be no problem before your Honor, because we can't come into this court and collect for that property which we have already been paid for.

It was argued before Judge Palmer — it was argued before Judge McCormick that this case should be enjoined because it would interfere with the process of this court. had this court taken jurisdiction. Judge McCormick concludes by saying:

“We conclude with the observation that the injunction to restrain proceedings in either of the State Court actions is unnecessary under the record before us. In the local suits no relief to the oil companies other than money judgments appears to be now possible. Such an outcome in the State Court would neither impair nor defeat the jurisdiction of this court in the condemnation [45] proceeding.”

The Court: That money judgment was based upon the taking of the personal property?

Mr. Bodkin: Taking of the personal property on September 28, 1942. And Judge Palmer allowed us the reasonable market value of the property at that time, together with damages for its withholding until January 12, 1944, holding in that case that the withholding during that time was unlawful and we were entitled to the reasonable use value of the property during that time. And from January 12, 1944 —

The Court: I think you have answered my question. It was entirely based upon the taking of the personal property?

Mr. Bodkin: That is true. Nothing to do with the real property at all.

A sufficient answer, I believe, to the argument of counsel would be the opinions by Judge Palmer in which he discusses the various judgment which might be entered. Pardon me. Will your Honor pardon me just a moment? I was trying to find, if your Honor please — Judge Palmer in the recent trial in 1946, the case we tried and which was recently decided, made a decision first on the question of liability, and then he went into the question of the amount of the judgment, and I was sure I had a copy here of his judgment. If not, I would like permission to file a copy of that with your Honor.

The Court: What was the Exhibit 1 or Exhibit A? Were those the findings? [46]

Mr. Bodkin: Yes, those are the findings, if your Honor please. The statement of the court as giving his reasons, I thought, might be —

The Court: In the judgment that was based on the findings?

Mr. Bodkin: When we tried the case first —

The Court: You mean he gave an opinion?

Mr. Bodkin: He gave an opinion at the conclusion of the trial on the question of liability. And when he decided that the defendants were liable —

The Court: It is that opinion that you want to present?

Mr. Bodkin: Yes.

The Court: Proceed, Mr. Bodkin.

If there is no objection, you may file it with the clerk of the court.

Mr. McPherson: It would fall in the same category as the observation made on Judge Palmer's findings on the evidence.

Mr. Bodkin. We conclude, if on September 28, 1942, when these various properties were taken from us, and retained until January 12, 1944, a cause of action came into being at that time on September 28th or 29th, 1942, and it continued in being against the Union Oil Company so long as the Union Oil Company retained in its possession the personal property, we have a right to go in there, into that court, and to [47] try those cases the same as we tried the other cases before Judge Palmer; to have the court determine, first, as to this other personal property, was the original taking lawful or unlawful? If it was unlawful, then was it retained by the Union Oil Company until January 12, 1944? And the court will find on that that it was retained by the Union Oil Company.

Now, I say regardless of whether the Union Oil Company was acting as an agent of the government or act-

ing as an agent of R. F. C., the fact remains that they can show no lawful authority for taking the property or withholding it from us.

The evidence will show we made repeated demands for it and it was turned down. They would not give it back to us.

We say we have a right to go into court and to try — not the case that is going to be tried before your Honor; your Honor is going to try this case, on January 12, 1944, when this suit was filed seeking by its amended complaint to condemn personal property, your Honor will be limited in determining the value of that property and the damages sustained by us by the value of the property at that time, January 12, 1944.

The findings here will show that this property became practically valueless between September 28, 1942, when it was allowed out in the fields unprotected —

The Court: You say "this property"; you mean the [48] personal property?

Mr. Bodkin: Yes, that property was allowed to deteriorate and rust away. And then at the end of that time when they filed this amended complaint, they sent out two or three junk men to the field, they appraised it as junk, they wanted to pay for it as junk, and we say that we have a right in some court to recover the value of the property at the time it was unlawfully taken. And we are seeking in that case — as Judge McCormick said and as Judge Palmer held, we could not recover the prop-

erty, because the property at the time the suit was tried was in the possession of the R. F. C., but the court held that we were entitled to recover the reasonable market value of the property at the time it was taken, together with the reasonable rental value until January 12, 1944, and interest at 7 per cent from that time on.

We feel that the courts do not favor these injunctions. We must assume, if your Honor please, that the State Courts are going to decide the cases according to law. If they don't decide the cases according to law they have an appeal to the Supreme Court of California; and if the Supreme Court does not decide it according to law, they can have it reviewed by the United States Supreme Court. They have ample remedy at law so far as this action is concerned.

We can't assume that the State Court is going to go out and go wild on something. They are going to decide it accord- [49] ing to law.

Counsel must have felt it had been decided according to law, because they paid off the other judgments.

We feel to restrain us from enforcing our judgment, which I say, and as the decisions point out, where they are different remedies — in this case we are seeking to get our damages for the withholding, detention of that property, the taking, and we feel that that will not in any wise, in any manner whatsoever interfere with this condemnation proceeding up here. If we get a judgment there it will be paid for; we will be paid and this court will not have the bother of going ahead through a long trial and determining whether the property was lawfully

or unlawfully taken, the value, or the damage sustained at all. It will be taking a burden off of this court.

But the gist of this, if your Honor please, and the reason they are so vigorously opposing it is this: In an action in the State Court we have a right to recover the reasonable value of the property at the time it was taken, together with reasonable rental value so long as it was unlawfully withheld, and oil property, oil drilling equipment and tanks and things like that have a very high rental value, so that so far as we are concerned we could recover a larger judgment there for that damage than if were to go in and say — [50]

The Court: You say you could recover it there; where do you mean?

Mr. Bodkin: In the State Court.

The Court: It would be to your advantage to try it in the State Court?

Mr. Bodkin: It would be to our advantage to try it in the State Court, certainly. And we feel if we have that lawful right we should be permitted to use that lawful right.

On the other hand, your Honor is going to decide this case according to law, and your Honor will hold that until January 12, 1944, there was no condemnation of personal property, no suit to condemn it, therefore the time fixing the value is the time the condemnation suit was started, and that is January 12, 1944. And if your Honor holds that way and allows us a judgment, it will be the value of that property which was allowed to rust

away and deteriorate greatly, and we will have nothing for that period of time in which it was withheld from us during the very active periods here in the oil business in California, and we feel that your Honor should hold as Judge Palmer held and as Judge McCormick held.

I say while it is true that in an action in rem the court which first acquires jurisdiction has jurisdiction to determine the issue before the court first acquiring jurisdiction, the only issue before that court is whether the taking [51] of the property on January 12, 1944 was valid. It can't go back and decide something where property was taken absolutely without any power, without any authority, without any right.

We feel we should be permitted to pursue our remedy there. I trust your Honor will read the briefs which we have filed.

Mr. Lieberman: May it please the court —

The Court: Mr. Lieberman, how long is it going to take you?

Mr. Lieberman: Not over 10 minutes, and maybe five.

The Court: Mr. McPherson, how long do you want?

Mr. McPherson: I would say about 15 or 20 minutes.

The Court: It is five minutes to 12:00 now. I have matters this afternoon, so the court will continue this until tomorrow morning at 10:00 o'clock.

(Whereupon, at 11:55 o'clock a. m., Monday, June 10, 1946, an adjournment was taken until Tuesday, June 11, 1946, at 10:00 o'clock a. m.) [52]

Los Angeles, California, Tuesday, June 11, 1946, 10:00 a. m.

The Court: Proceed.

Mr. Bodkin: If your Honor please, yesterday I spoke of the decision of Judge Palmer, which I desire to file in this case and I have it here.

The Court: Is there anything else here except his decision?

Mr. Bodkin: That is just his decision on the question of liability, and discussion of various cases.

The Court: He wrote quite an opinion, didn't he?

Mr. Bodkin: Yes. It was tried on the question of liability first, and the matter was under submission and decided, and then later on we tried the question of the amount of damages.

Mr. Lieberman: If it please the court.

The Court: Mr. Lieberman.

Mr. Lieberman: It seems to me that the admission that counsel made yesterday to the effect that the two cases which they brought in the Superior Court, and which are included in the four cases we are asking this court to stay, which asked for the value of oil and gas extracted from the property under condemnation and their leaseholds, that when he admits, as he did, that those are not proper cases now, that they have no cause of action now, that they were brought only to beat the [54] statute of limitations in the event this court should ultimately dismiss the present proceedings, condemnation proceedings, that when he makes that admission he confesses in effect our application for an injunction, because he admits it is not proper to proceed with those cases. To that extent, therefore, there is an admission here that we are being harassed by this unnecessary

multiplicity of law suit, predicated solely on the possibility that the condemnation proceedings may be dismissed.

Now, let's go a step further. The other two cases are claim and delivery actions; they are actions in rem; they seek an order of court redelivering to the plaintiff personal property alleged by him to belong to him, plus whatever damages may flow under the rules of damages in the State of California.

There must be an alternative judgment in a claim and delivery action, either for redelivery or for the value.

Now, what is he seeking to recover?

For the most part the property itemized in the action in the Superior Court in the two claim and delivery actions comprises pumping equipment. In the previous two cases — we tried them as one case — the equipment was all drilling equipment.

The reason for the taking of drilling equipment, as distinguished from pumping equipment, was as the evidence showed, while drilling equipment is used primarily for drilling a new [55] well, it is used often — as it was in this case — as stand-by equipment, so that when the well has to be pulled or operations cease and they have to drill deeper, they have got the drilling equipment there in order to facilitate continuation of operations. That is why this drilling equipment was there, one of the reasons why it was on these premises.

They have some drilling equipment involved in this lawsuit, but primarily, and I think for the most part, you will find it is pumping equipment. Some of that pumping equipment is a part of the well; it is installed in the ground; it is affixed to the ground; it is an integral part of this land, and it is therefore real property and can't be treated as personal property, just as much as the oil

and gas was real property. It was a part of the land that was condemned, title vested in the United States on February 28, 1942. So title in this pumping equipment vested in the United States on that date. If that is correct, then certainly they can't obtain a judgment in the Superior Court. If that is correct, then certainly it is a part of the valuation to be fixed in this condemnation proceeding. And if at the same time we have got a case going on in the Superior Court, and it should go to judgment there, and the judgment is granted there for all of the alleged equipment, how is there to be a segregation between the amount of the judgment paid for or the amount of [56] the equipment paid for in the judgment in the Superior Court, and the amount and value to be determined in the proceedings in this court?

I am trying to show the effect, your Honor, of a judgment in either or both courts, to show how the Superior Court proceedings do interfere with the jurisdiction of this court, and interfere with the proceedings that are pending in this court, and necessarily interfere, they inevitably interfere with the findings that this court has to make before it can properly determine the proceedings here.

Now, you can't segregate for the purpose of this proceedings, for the purposes of this petition, the personal property that they may have a right to go into the Superior Court on, and the other equipment that is a part of their alleged personal property recovery suit, which is, in effect real property; and this proceeding in the condemnation case can't be finally determined without the court determining the question as to whether or not that equipment or any of it or all of it is real property.

Under certain views it can well be held that even drilling equipment that is used as stand-by for the facili-

tation of the operation of pumping equipment, which is in itself real property, that it is all one and consequently all to be treated as real property.

Now, let's forget the real property phase for a moment [57] and come back to the effect of Judge McCormick's decision.

In my humble opinion the entire effect of Judge McCormick's ruling, whatever opinions he may have expressed on other questions that were argued, the effect of the ruling was that the action here could not be abated, I mean this court would not abate the Superior Court action, if there was a priority of assumption of jurisdiction or vesting of jurisdiction in the Superior Court; and he found that there was. He found it first by the holding that this action on February 28th was only for real property. It didn't include personal property. That if there had been any doubt about it the amendment filed on January 12, 1944, was an admission that the original complaint didn't include the personal property. Consequently, so far as the personal property part of the condemnation was concerned, it started in January, 1944, and that the original taking of possession was not pursuant to the processes of this court which had been issued on September 28, 1942, that all that took was real property, since title in the personal property vested as of January 12, 1944, the date of commencement of the personal property condemnation, because that was the date of the amendment — and the effect of the ruling being that this did not, this amendment did not translate back to September 28th, for the purposes of the personal property. In other words, we argued that an amendment dates back to the date of original [58] complaint. They argued that this was in effect a supplemental complaint and not an amendment.

I assume Judge McCormick held with them, because he held that this amendment dated as of the date of its filing, January 12, 1944.

That being the case that was the time that we vested this court with jurisdiction of that res, whereas the Superior Court had already been vested with the jurisdiction of that res prior to that time in September of 1943, or whenever the Superior Court action was started. I think it was September or November.

Mr. Bodkin: November 15, 1943.

Mr. Lieberman: These actions are September and November of 1945, a year and nine months and a year and eleven months after this court had already been vested with jurisdiction of the personal property phase of the action, and I have already pointed out that this case can't be finally and properly determined without this court making a determination as to which of this property was personal and which of this property was real.

So I submit, if it please the court, that regardless of the proceedings in the Superior Court on those two cases, the ruling of Judge McCormick can be the basis of your Honor's ruling that this court having been vested first with jurisdiction it should retain that jurisdiction without interference [59] by any other court, and, finally, from the other phase of it, harassment of a defendant by a multiplicity of actions.

The original action should have included all of this alleged personal property. An amendment was sought in the Superior Court at the time of trial, in the midst of trial, to add some of this equipment or add all of this equipment that is involved here. The only reason or explanation for it was that it was overlooked at the time of the preparation of the inventory that was made a part

of the original complaint in the Superior Court. Objection was made to the amendment of the complaint at that late date on the ground that the defense of the action required the use of experts, and these experts had been required to go out on the premises and to make an examination of the premises, an examination of all of the personal property that was being sued for, and the defense had not had any of its experts examine any of the equipment that was sought to be included in the amendment. The court sustained the objection to the amendment.

Now, I submit, if it please the court, that the question may well be raised, and we may be right in raising that question, that when a person brings suit for the recovery of certain equipment which is all a part of one process and a part of one ownership, and a part of one inventory, and a part of one taking, that he has lost his right, having sued for a part of it, to sue for the rest of it. [60]

But that isn't a question for determination here. I am raising these questions, your Honor, to show you the many questions that would be involved in the trial of these proceedings, and how they are interwoven inextricably with a determination of the condemnation.

The Court: Mr. Lieberman, before you go I want to ask you a question. By the asking of it I don't want you to think that I am doing it in an argumentative way at all, or that I am taking any position, but just for enlightenment, that is all.

The first taking was in November, 1943, I believe you stated?

Mr. Lieberman: September 28, 1942.

The Court: What is it?

Mr. Lieberman: September 28, 1942 was the actual physical taking, and the date of the decree of possession. January, 1944, was the first time —

The Court: What was the date in November?

Mr. Lieberman: November is the date they brought suit.

The Court: All right. I don't want that. Let me get this —

Mr. Lieberman: November, 1943, is the date they brought suit.

The Court: Wait just a minute. When was the actual taking of the personal property? [61]

Mr. Lieberman: September 28, 1942, personal and real were taken on that date.

The Court: When the amendment made to the complaint?

Mr. Lieberman: January, 1944, the amendment which specified the personal property. January, 1944.

Mr. Weymann: January 12, 1944.

The Court: There was a period there of a year and some months. Now, during that time the possession was taken by the marshal; is that correct?

Mr. Lieberman: That is correct.

The Court: And the property was delivered to the Union Oil Company?

Mr. Lieberman: He turned it over to R. F. C., and they immediately turned it over to Union Oil Company.

The Court: The contention of Mr. Bodkin is that his people were deprived of that property during all that period, more than a year, and that they will have no recourse for the lack of possession during that time they were deprived of the use of that property, and that it depreciated in value. What have you to say about that?

Mr. Lieberman: I think if the court here has jurisdiction, I think there can be no question about it, the court here must necessarily determine the date of possession, and will then determine either that the value to be allowed for the taking was as of the date of the actual first physical [62] taking of possession, if the court finds that under the War Powers Act they had a right to do that, or if the court should hold, as Judge Palmer did, that it was an unlawful taking in September, 1942, and that therefore there was an unlawful holding between that time and the time in January 12, 1944, when it became a lawful taking here, I don't see how the court can avoid allowing damages here in this action.

The Court: Well, you mean as of September 28, 1942?

Mr. Lieberman: I think it will either have to allow valuation as of September 28, 1942, or as of January 12, 1944. If it decides that the valuation has to be as of January, 1944, because that was the date of legal taking, then it was to allow something for the period intervening during which time the government was in possession.

The Court: Is that involved in this type of action?

I say I am just asking for enlightenment because I want to get the views here of all of you on that point.

Mr. Bodkin has expressed himself very definitely there, and he holds that by the failure to allow the plaintiffs to proceed in the State Court, that they will be deprived of a very substantial part of their property of deterioration. Of course that would be very appealing if he is correct in that. And that there is no recourse, plaintiff would have no recourse.

Mr. Lieberman: My answer to that would be, your Honor, [63] first, if the court here should find that the

date of valuation is as of the date of original taking, on the ground that under the War Powers Act the government had the right to take it, then it will be this court's determination under the federal rules that that was the date of actual — the date they were entitled to compensation for the value. If they are entitled to compensation for the value as of that date, then we became the owners as of that date and they were entitled only to compensation.

The Court: Suppose the court should say the order of the court was that they take the real property, they had no business to take anything else, and the government shouldn't have to pay for anything and couldn't pay for anything except from the date of the legal taking, and that there would be some deprivation as Mr. Bodkin has stated; then it would appear that there would be a loss without any recourse, unless you can state to the court what it would be. And, of course, if that is the situation it would be very appealing to the court in considering a matter of this type, which is the basis of an equity proceedings —

Mr. Lieberman: I think I have the answer to that.

The Court: I would like to know what it is.

Mr. Lieberman: This injunction, after all, is not an application for a dismissal of the Superior Court case. The effect of this injunction is to abate the proceedings. The [64] case remains on the calendar there; it can't be dismissed even under the State Court rules for lack of prosecution, on the ground that the failure to prosecute was not the fault of the plaintiff, it was an order to the Federal Court. Since the Federal Court may have to decide all of these questions that we have been discussing here this morning, this court's jurisdiction can't be exhausted and be interfered with by the State Court until

this court has finally determined all of these questions I have discussed.

If the court should finally determine on the date of the judgment in the condemnation action, that the taking was on January 12, 1944, that the taking prior to that time, therefore, was unlawful, the judgment in effect will be a recognition of the unlawful taking and the unlawful holding between September, '42 and January, '44, thus leaving that part of the cause of action to be proceeded with in the Superior Court. But it shouldn't be proceeded with, because if the court here should rule according to certain of our views, then whatever proceedings would be had in the Superior Court would interfere with that.

The Court: Your position is if the court takes that last position and decides that the taking was as of January, 1944, that there would be no interference with the right of the plaintiff to proceed in the State Court with its case based on the intervening time from September 28, 1942? [65]

Mr. Lieberman: That is right. Exactly the same as if this proceeding here would be finally dismissed there would be no interference with Mr. Bodkin's proceeding with his presently filed action for the recovery of the gas and the oil.

The Court: If that is the situation, then of course the argument that it could all be decided in one suit would not prevail.

Mr. Lieberman: Unless I am right in my contention and in my view that this court will have the right and the duty to determine not only the value as of January, 1944, but also the value of the withholding prior to that time.

The Court: It could only do that if it held that the taking was lawful, is that correct?

Mr. Lieberman: The taking became lawful in January, '44.

The Court: It could only do that if the court would determine that the taking was lawful as of September 28, 1942.

Mr. Lieberman: Under the War Powers Act. Maybe you are right.

My view was that once the court has acquired jurisdiction in a condemnation proceeding, and has to determine a value of whatever date, if it develops that there was an actual taking prior to the lawful condemnation, that it is within the jurisdiction and within the duty of this court to make a determination of the value of the withholding also. [66]

If the court should say that under the federal rules they are not entitled to that type of measure of damages, if Mr. Bodkin is arguing that he has a more favorable measure of damages in the Superior Court, then that shouldn't be an argument against this stay here, because if this jurisdiction was vested in this court prior to that of the Supreme Court, this court acquired jurisdiction and he is out of luck on his measure of damages, just exactly as we were out of luck on the measure of damages he having acquired jurisdiction in the first two actions in the Superior Court.

The Court: The court, I think, is entitled to know your views.

Do you think the court had jurisdiction over the personal property on September 28, 1942?

Mr. Lieberman: I do, under the War Powers Act, and we are all agreed on that. I don't know whether

other two counsel, who are more expert in condemnation law than I am — mine dates back a long period and this is recent — but we have all taken the position here that under the War Powers Act it required no order of court to take possession: that it was the intention and purpose of the War Powers Act to give immediate and summary right in the government to take whatever it required, and the Constitution gave to the person who was deprived of his property his remedy.

The Court: Let us put that more concretely. Is it your [67] opinion that the court had jurisdiction over the personal property under the order of September 28, 1942?

Mr. Lieberman: Yes.

The Court: What is it?

Mr. Lieberman: Yes, it is our opinion.

The Court: Have you finished your argument?

Mr. Lieberman: Yes.

The Court: Very well.

Mr. McPherson: May it please your Honor, I think you have well put what is likely to be one of the controlling points in the case, and one which we argued with much vigor before Judge McCormick, and with equal force before Judge Palmer.

The answer to my mind is a very simple one. The jurisdiction of this court attached to all phases of this acquisition, including all of the property as to which the government went into possession, on September 28, 1942, for a number of reasons, some of which have been mentioned by Mr. Lieberman. The most recent pronouncement on the subject is a case referred to in our brief, which I didn't mention yesterday because of your Honor's injunction that we not follow the form and order of the brief, as I understand it. The point is this:

In the *Yearsley v. Ross Construction Company* case, which was decided very recently in 309 U. S. 18, (the opinion by Mr. Chief Justice Hughes) the point involved was practically [68] the same. There is dredging contractor doing reclamation work on one of the large rivers had set up some paddles and pumps and had backed up an old rear wheeler boat and was sloughing away the land of the adjoining property owner with a view of straightening the contour. He brought suit against the *Yearsley Construction Company* in the District Court. The *Yearsley Construction Company* set up its contrast with the engineers, showed that the statutory authority existed for doing the reclamation work on the river in the manner and under the specifications filed. There was never actually any condemnation case ever filed. The judgment was against the construction company in the lower court for the value of the riparian owner's land thus destroyed. The government appeared *amicus curiae* in the Supreme Court; the point was argued at great length, and the point was disposed of in one paragraph, and it is this:

"The adoption by the United States of the wrongful act of an officer is of course an adoption of the act when and as committed, and causes such act of the officer to be, in virtue of the statute, a rightful appropriation by the government, for which compensation is provided."

The Court: Your contention is that the government confirmed the action in taking the personal property on September 28? [69]

Mr. McPherson: Yes, your Honor, that is one phase of it. Then I think the amendatory character of those resolutions which were offered by Mr. Bodkin, and which

were heard on the first application for injunction, together with the amendment of the complaint in this court, which amendment dealt practically exclusively with personal property, as distinguished from real property, related the cause of action back to the original day on which it was filed. That is another phase of the case.

Third, a point which I wish to comment on, and which was not referred to by Mr. Lieberman, was the rule of the Supreme Court in the *Paquete Habana* cases; that whether or not the act was wrongful when and as committed, that once the Federal Government ratifies it, adopts it, and pursues it as its act, there is no remedy under the American system of jurisprudence against the agent through whom the sovereign power committed the wrong, if it were wrong in the first instance.

Now, with every deference to Judge Palmer and to the opinion which you were asked to read this morning, frankly, it seemed to me astounding. No one of the cases cited by Judge Palmer in that memorandum opinion, no one of them had in it a single feature of the point of law argued to Judge Palmer on this very point.

The point was made that when an act of an agent of the Federal Government has been ratified, that there is no remedy, [70] no right to pursue further the agent who did the wrong.

The cases that he cites in answer to those which we set up, and some of them are referred to in our brief which we filed before you, we left out some because we wanted to shorten it, the cases he cites without exception deal with the right of the Federal Courts to enjoin the commission of an act by a federal agent not authorized by law, before it is committed.

They have no more relation to our problem than does —

The Court: In other words, there is no element of ratification?

Mr. McPherson: In those cases. Those were actions in equity to restrain a federal officer.

The Court: Let me ask a question here now. Did I understand correctly that no appeal was taken from these cases, these judgments of Judge Palmer?

Mr. McPherson: I stated yesterday when I argued the case there was an appeal. The Attorney General directed one to be taken. But I now understand they were compromised before the appeal was perfected.

Mr. Lieberman: That is right.

Mr. McPherson: But they were paid, if your Honor please, by check drawn on the Treasury of the United States.

Have I stated my position with respect to this relation back as you wish it?

The Court: Yes. [71]

Mr. McPherson: There is one other feature of the case, it seems to me, that is not cited in our brief, that if your Honor wishes to pursue it, it will be helpful, and that is the line of cases that we know as the Shoshoni cases. They were expropriations by the Indian agents of lands of the civilized tribes, putting schools on one tribe's land for use of the other, which continued over a period of many, many years, thirty, forty years, as I remember it, and the valuation was, of the property, as of the date the original entry was made.

Then there is the North American Transportation Compaany case, which was an extrajudicial entry by an Army officer into certain lands up here in this very circuit, I believe it was in Washington if I am not mistaken, in which the subsequent ratification was held to relate back to the date on which he took the property.

My recollection of that case is that it is North American Transportation Company.

I will give you those citations if your Honor wishes them. They are not in the brief.

The Court: Don't give any additional citations unless you think it is necessary. You have given citations, I think, on every point here.

Mr. McPherson: Some of them, yes.

The Court: Sometimes we get to discussing collateral [72] matters and they assume quite important positions at the time of argument, when they really are more or less collateral.

Mr. McPherson: I thought so myself. Then one of the statements that Mr. Lieberman made I wish to subscribe to, as counsel of record for the government in this case, so you will have our position, and that is that whatever disposition this court makes of the point — that is, the subject-matter of the suit, and of which you have jurisdiction, that is to say, whether they should be compensated back of January 12, 1944, must be first made by this court before there is any right of action against this agent in the Superior Court of Los Angeles County. So that until you make that decision Mr. Bodkin hasn't, as he contended, been deprived of any right.

Of course, I don't think that you will make such a decision.

The only other matter that I wished to bring to your Honor's attention until this point was called is this: Perhaps unintentionally, but there was, it seemed to me, some suggestion that there was no real difference between the problem presented to you for determination and that presented to Judge McCormick. I want to touch very lightly on what those differences are. Those

that were mentioned by Mr. Lieberman I will not refer to, in order to shorten it.

The primary difference was that in the application before [73] Judge McCormick we were seeking to enjoin and restrain the prosecution of two actions in claim and delivery, having to do with the recovery of possession or damages for detention of purely personal property. The actions which you are asked to enjoin this morning do not relate in any way to personal property. The property which forms the subject-matter and predicate for the four suits that we are seeking you to restrain the prosecution of is all real property. And if we are correct in our contention that was in fact real property, and I am sure it will not be denied, then the date that you are concerned with as to your jurisdiction is September 28, 1942 and not January 12, 1944 as has been suggested.

The Court: Mr. McPherson, I don't want to prolong this argument at all, but you are now speaking about all of it being real property?

Mr. McPherson: Yes, sir.

The Court: Mr. Weymann, may I ask you a question?

I guess I should, but I don't exactly recall all the details in the Block case. What was the distinction in the Block case?

Mr. Weymann: The distinction in the Block case was that a separate date of valuation was contended for so far as concerned the operating equipment.

The Court: In the Block case there was part of the equipment which the court believed was clearly real property, it was affixed to the real property, and I so determined.

Mr. Weymann: That is correct.

The Court: But there was a good deal of personal property in the form of tools and loose equipment that had no connection whatsoever with the real property.

Now, that was my view. Your view was that it all should have been valued as of September 28, 1942.

Mr. Weymann: That is correct, as a single operating unit.

The Court: But the court was of the view that part of it was personal property, and that that part which was definitely personal property should have been valued as of January — no, it seemed to me it was November.

Mr. Weymann: October 4th, that was the date of the adoption of the resolution authorizing the amendment of the complaint.

The Court: Yes, as of October 4, 1944.

Mr. Weymann: And that is the date your Honor fixed.

The Court: Does the same situation obtain here? That is, is part of this property that is affixed to the well, as the court held it was in the other case, and part of it personal property that the court believed was entirely personal property in a legal sense and had no connection whatsoever with the real property; is that the situation here?

Mr. Weymann: I believe that is the situation. Part of the property here is casing in the well, part of it is [75] pumping equipment, liners, tubing, sucker rods, and the pump and a derrick, I believe, is included.

The Court: The derricks, of course, were affixed to the land.

Mr. Weymann: That is correct.

The Court: I am speaking about the cables and the tools and various things that had no connection what-

soever with the real property. Is there the same thing here?

Mr. Weymann: There may well be, and I am not in a position to say that there are not some —

The Court: You are appealing on that point chiefly, aren't you?

Mr. Weymann: That is correct.

The Court: What is the status of your appeal?

Mr. Weymann: The opening brief is due on July 20th.

The Court: It hasn't progressed very far.

Mr. Weymann: No, it hasn't progressed very far.

The Court: Thank you for informing me.

Go ahead, Mr. McPherson.

Mr. McPherson: Confining myself simply to the points that Mr. Lieberman did not mention —

The Court: Yes, and mention them just as concisely as you can, because we are taking more time than anticipated. I think it is largely due to the court's interrogation, though.

Mr. McPherson: The one point that surprised me is the [76] contention of Mr. Bodkin, and which seems to me is completely and effectively disposed of by both the law which regulates and confines the jurisdiction of this and all other courts, as well as the courts of California in actions where the sovereign is involved, when he admits, as he did yesterday, that the government is the real party in interest and he simply filed these suits in the State Court for convenience against an admitted agent.

Now, let's see how he did that and then I am going to leave that equity to your Honor's own mind, which I know is as clear on that point as any I have ever heard discussed, the question of good faith.

Bear in mind that in order to get into this position Mr. Bodkin and his client have come here and time and time again, as many as fifty, perhaps, have stated either in open court under oath or by way of pleadings that the government seized his property. In the State Court the very essence of his jurisdiction depends on the equally forceful, but I think untrue, and admittedly untrue in this court, allegation that the Union Oil Company seized his property.

Now, our interest in the protection of the Union Oil Company is not beyond, more, or any different than the obligation of the contract which the government has with the Union Oil Company to operate this property, a copy of which is before you. Our interest in appealing to you for injunction [77] against the persecution of that agent is to prevent them doing indirectly what they could not do directly, and that is to make the government answerable in the courts of California for this wrong, if it were a wrong.

Now, the Ninth Circuit has disposed of an equally effective point, which it seems to me controls this decision; we argued it to Judge Palmer; in the Wells Fargo case, which was cited by the Ninth Circuit in the Western Fruit Growers case, which originated in this very court. The Western Fruit Growers case was an application for an injunction to restrain interference with enforcement of one of the government department's regulations by action in the State Court to prevent them from carrying it into effect. Judge McCormick signed the original restraining order; Judge Yankwich signed the final decree. The appeal was to the Ninth Circuit, and they hold stronger than any other circuit in this country that the identity of the subject-matter, the cause of action which would be restrained in the Federal Courts

is simply subject-matter and not res. So we find ourselves in the position where the application is for an injunction in the circuit that has gone farther than any other circuit in the country in preserving the federal jurisdiction of actions involving the Federal Government.

The answer is a simple one going back to *Gibbons v. U. S.* in 8 Wallace, when the Tucker Act was brand new, and when the [78] court was asked to change the rule and give effect to a cause of action arising ex delicto under the Fifth Amendment, as though upon an implied promise, the court at great length pointed out that the Federal Government must never be presumed not to answer for its debts in any court. The jurisdiction of no court can be extended by the harshness, if there be harshness, in the result obtaining in employing the uniform rule of sovereign immunity to suit.

If that is the rule, and it has been since 8 Wallace, why should it be relaxed for convenience of counsel? Why should it be relaxed on the whim of counsel?

The mere statement to you is that he does not intend to bring the cases on for trial, when if you will think about it for a minute you will see what he is doing is this: He is seeking to recovery under the guise of an action ex delicto against an agent of the government of the United States for things done in the oil cases in the operation of property after the government has come into possession under an order of this court, and as to the claim and delivery action, as he contends, because of the wrongful seizure. That, I am certain, your Honor will not permit.

Mr. Bodkin: May I say a couple of words, if your Honor please?

The Court: The government has a right to close, so make it very concise, Mr. Bodkin, because Mr. McPherson and Mr. [79] Lieberman will have a right to reply to any new matter.

Mr. Bodkin: Yes, I will make it very concise.

I hope your Honor will read the cases that have been cited, and not take the construction placed upon them by Mr. McPherson. If your Honor will do that, I will be very happy.

The Court: You mean the cases cited by Judge Palmer?

Mr. Bodkin: Yes, by Judge Palmer, and the cases cited by Mr. McPherson today.

The Court: The last cases he referred to?

Mr. Bodkin: Yes. The jurisdiction of the court that has the power to determine. If your Honor has held, and I was not aware that you have held in the Block case, because I was not present at the trial, that a certain type of property was in fact clearly and truly personal property, and that it was unlawfully taken on September 28th, and that the lawful taking could not go beyond October 4, 1943 —

The Court: Read that statement, please, Mr. Goldstein.

(The record was read.)

Mr. Bodkin: That is the time of the adoption of the resolution.

The Court: I think if you make it this way, that the court held that a certain part of the property was entirely personal property, and that the taking of the personal property was on October 4, 1944? [80]

Mr. Bodkin: '43, if your Honor please.

The Court: '42, yes.

Mr. Bodkin: Therefore, it being admitted that at least a part of the personal property we are suing for here today comes within that classification, this court — and I think the law is well established — can only compensate in a compensation suit for the lawful taking of property.

It would be a fine thing if the court, perhaps, could grant damages and do the things suggested by Mr. Lieberman, but the law is undoubtedly clear that they can only grant damages in a compensation suit for the value at the time it was lawfully taken.

So we have at least from September 28, 1942 until October, 1943, which was the first start of any attempt to condemn personal property as such, an unlawful taking and an unlawful withholding. That being the case, this court is without jurisdiction to grant us any relief in this action, and there cannot be a conflict between this court and the State Court, where the State Court is in a position to grant relief in that regard.

Now, the Western Fruit case that has been referred to involved crimes under the Federal Statutes, federal crimes; the Circuit Court held that the Federal Court has exclusive jurisdiction which, of course, is just common sense.

I don't intend to take any further time, if your Honor [81] please. We filed a rather comprehensive brief, two briefs here, and if your Honor will read those cases I am satisfied that he will deny the injunction.

I may say so far as the oil cases are concerned, they were filed for the purpose of preserving our rights in the event that your Honor should hold the entire proceedings were void, or in the event the case should be eventually dismissed.

As to the personal property, we filed those with the intention of trying them, and we have set them down for trial but have not attempted to set down the oil cases for trial at all.

The Court: Let me get that straight about those four cases now. Will you state it again? I think you have, probably.

Mr. Bodkin: The two cases involving personal property, equipment, and matters of that kind, were filed within three years of September 28, 1942, and those are the cases which we are seeking to try and we have set for trial, and they are set for trial in September, 1946.

The Court: What about the other two cases?

Mr. Bodkin: The other two cases, the oil cases were filed later, and were filed for the purpose of having an action on file so that if your Honor should hold that the entire —

The Court: You have stated that. What about this, Mr. [82] Bodkin? Would you have any objection to the abatement of the trial of the two oil cases by an injunctive order of this court?

Mr. Bodkin: The two oil cases?

The Court: That is the real property cases. As I understand it, two relate to personal property and two relate to real property.

Mr. Bodkin: So far as the oil is concerned, we will stipulate now that we will not try those cases until this present case is determined finally, so far as the two oil cases, which we have not attempted to set for trial.

I don't like to have an injunction granted against us, but we will stipulate here in court that we will not —

The Court: I just wanted to get your position.

Mr. Bodkin: So far as I am concerned, we don't intend to try those cases, because if, as a matter of fact,

the court did have jurisdiction and the case is eventually prosecuted to final judgment on the real estate, then our oil cases cannot be successfully prosecuted.

The Court: Let me ask you one further question. You, I think, have an understanding of what the ruling of the court was in the trial of the Block case; that is, certain of the equipment there was so attached to the well that the court is of the opinion that it was real property, and certain of it was so clearly loose and independent from any possible fixture [83] to the real property that the court was of the view that it was without question personal property; that the date of one was October 4, 1943, and the date of the other was September 28, 1942. Assuming that the court's position would be upheld by the Appellate Courts, what then would you say would be the effect of that decision upon the similar property here?

Mr. Bodkin: If that were upheld that as to certain pipes and things in the well, and if your Honor held on the derrick, why, naturally that would be a determination that that was real property.

The Court: I understand that, but I am thinking of the effect that would have on the two cases in the State Court.

Mr. Bodkin: The result would be that as to certain of the personal property, we could recover judgment as to those.

Mr. McPherson: I can't hear you.

Mr. Bodkin: I say as to the property which was clearly personal property under the court's decision in the Block case, naturally we could only recover our damages for that.

The Court: And if you failed to recover it as of the date of September 28, there would be an injury to your clients?

Mr. Bodkin: Yes.

The Court: Now, Mr. McPherson, let me ask you what is your view of that same situation? We will put it a little differently. Suppose the Court of Appeals reverses the [84] District Court on that and goes along with your contention.

Mr. McPherson: I don't think, your Honor, if I understand your contention correctly, that it makes the least bit of difference in the world. Your question here is one of jurisdiction to make the determination, and that is exclusively in the Federal Court; whether it be real property or personal property is of no moment.

The Court: Read that answer.

(The statement was read.)

The Court: The court is considering now injunction. This court is asked to enjoin the prosecution of certain cases, and the very basis of injunction is equity.

Mr. McPherson: Yes, your Honor.

The Court: Now, what would be the effect from an equitable viewpoint, that is, as to the alleged injury that will result to the plaintiffs in the State Court with regard to the personal property which may be held to be entirely personal property, as I have thought it was?

Mr. McPherson: Maybe I don't—

The Court: Say the Court of Appeals sustains the District Court in this^e appeal in the Block case. If it does, then it will say that the personal property which is clearly personal property should be evaluated as of October 4, 1943. There is a lapse of a little more than a year there during which time Mr. Bodkin contends

that his clients have been injured by [85] reason of the deterioration of the property.

Is the court's question clear to you now?

Mr. McPherson: I think so, your Honor. Let me state it so I will be certain I am answering the question. You wish me to express an opinion on the propriety of an injunction in the event the Circuit Court should uphold your finding that the effective date of taking of personal property was October 4, 1943?

The Court: I think that is a very concise statement.

Mr. McPherson: Then I would say that it would have no bearing on the impropriety of the issuance of the injunction now. It would have a bearing on the propriety of restraining further prosecution of that suit when and if this owner was denied compensation in this case for the taking of his property evaluated as of whatever date your Honor fixes with damages for the possession of the government for the preceding period. The question of damages for possession of Block's property for the period in advance of October, 1943, was not in your case, as I remember it. In other words, I don't see that the Block appeal controls your decision here.

The Court: It might not control, but it might have some bearing upon the possible injury to the clients of Mr. Bodkin if they are deprived of the right to proceed in the State Court.

You think they would have no possible injury until after [86] the court shall have determined here whether or not the valuation should be made as of September 28th or, say, October 4, 1943?

Mr. McPherson: That is correct, until your Honor has fixed the liability and has failed to comprehend the effective date of taking and the intervention possession,

Mr. Lieberman: And has determined which is personal and which is real.

The Court: It is very unfortunate for us to try to be too sure of anything in law matters, particularly when it comes to fixtures. I think a definition I heard read of fixtures once wasn't such a bad one, either. Some judge defined "fixtures" as anything about which there was any question. If there was any question as to whether it was a fixture or not, then it was a fixture.

I wouldn't be too sure about any of these matters until after the Supreme Court has ruled on them, but what I had in mind was this: My view at the time was that certain of this well equipment was personal property and certain of it was real property, because it was affixed to the realty. Mr. Weymann's position was that it was a unit and used in conjunction with the operation of the well, and, therefore, it was all real property and came within the terms of the order of taking. I didn't agree with him, and that matter is now on appeal. I don't believe I could make any different determina- [87] tion if the matter were presented to me at a later time, which it probably will be. I know right at the moment I wouldn't make any different determination, because Mr. Weymann very forcefully and at length argued his position, his contention. So unless something would come up to change my mind, I think that the ruling of the court would have to be the same on that particular point. I was thinking that it might be of help if we didn't have to determine this question until after the Court of Appeals had determined that question in the

Block case. I don't want to hold it up, but also, it seems to me, that the defendants here certainly couldn't suffer any more if the court should hold it up until after the decision in that case than they could or would suffer if the court granted the motion for the injunction.

That is just a thought that occurred to me.

The Court: Could you gentlemen arrange to have the transcript written up of these proceedings?

Mr. Bodkin: We would join with you in having it written up.

Mr. Weymann: We will telephone for authority, and I don't think there is any question about getting it.

The Court: It is going to be some time before I am going to be able to get to this. I take over the criminal calendar in July. I don't know just how much time I will be able to give for the purpose of determining this motion. Injunction [88] matters, of course, ordinarily should take precedence over most matters, but criminal matters take precedence over everything.

Mr. Clifton, what were these other matters on the calendar?

The Clerk: Two motions involving the Title Insurance and Trust Company's answers.

The Court: Mr. Weymann — this is not on the record.

(Discussion had off the record.)

The Court: Let's continue those matters until the 24th of June at 2:00 o'clock.

Upon the presentation of the transcript the matter is ordered submitted.

[Endorsed]: Filed Aug. 21, 1947. [89]

[Endorsed]: No. 11768. United States Circuit Court of Appeals for the Ninth Circuit. Treasure Company, a corporation, and Samarkand Oil Company, a corporation, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed, October 23, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the Circuit Court of Appeals of the United States
in and for the Ninth Circuit

No. 11768

TREASURE COMPANY, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

POINTS TO BE RELIED UPON BY APPELLANTS, TREASURE COMPANY, A CORPORATION, AND SAMARKAND OIL COMPANY, A CORPORATION, IN APPEAL FROM ORDER OF AUGUST 4, 1947; AND DESIGNATION OF RECORD.

The defendants and appellants Treasure Company, a corporation, and Samarkand Oil Company, a corporation, respectfully submit the following Statement of Points to be relied upon by them in their appeal from that certain Order of the District Court of the United States, in and for the Southern District of California, Central Division, made and entered in case numbered 2454-B, Civil, in said Court, in the above entitled action, by the Honorable Campbell E. Beaumont, Judge presiding there, on the 4th day of August, 1947, which said Order refused to dissolve and vacate the interlocutory injunction theretofore granted in said proceedings by said Court by its Order entered in said proceedings on January 7, 1947, and modified by an Order of said Court entered in said proceedings May 22, 1947; together with designation of the portions

of the record in this appeal which said defendants believe necessary for the consideration thereof, as follows:

I.

The following is a chronological statement of events leading up to this appeal:

(a) On September 28, 1942, the United States of America commenced an action for a condemnation of certain land, a part of which was subject to a leasehold interest in favor of these appellants by virtue of certain oil well leases.

(b) Neither said Complaint in Condemnation, nor the Order for immediate possession of land made September 28, 1942, nor the Declaration of Taking of Land made October 26, 1942, nor the Decree on Declaration of Taking of Land made October 26, 1942, made any reference whatsoever to any personal property or to anything but land.

(c) On September 27, 1945, these appellants filed actions numbered 505,967 and 505,968, respectively, in the Superior Court of the State of California, in and for the County of Los Angeles, to recover possession or the value of certain personal property belonging to these appellants and which was situated on the portion of the land sought to be condemned, which was subject to the said oil leases under which these appellants were lessees. Said personal property was wrongfully taken and detained from September 28, 1942, until the filing of the Amended Complaint on January 12, 1944, by Union Oil Company of California, a corporation, the sole defendant in said State Court actions. The petition for injunction alleged it was taken by the United States Marshall, but the record shows that the United States Marshall, purporting to act for the

United States Government, the plaintiff in said condemnation action, but without any actual authorization by plaintiff herein or any of its agencies, or by any order of any Court, unlawfully took possession of said personal property and delivered it to Union Oil Company of California, a corporation, who refused to deliver it to its owner upon demand.

(d) The said United States District Court acquired no jurisdiction with respect to said personal property until January 12, 1944, when a Supplemental Complaint, designated an Amended Complaint, was filed, by which plaintiff therein sought to condemn said personal property, which had been unlawfully taken and detained by Union Oil Company of California, a corporation, since September 28, 1942.

(e) During the period between September 28, 1942, and January 12, 1944, said personal property depreciated substantially in value and during said period there appellants were deprived of its use.

(f) On January 7, 1947, said District Court by an Order then made and entered restrained these appellants from proceeding further with said State Court proceedings against Union Oil Company of California, a corporation, which had not reached trial or judgment.

(g) On May 22, 1947, said Order of January 7, 1947, was by stipulation modified by said District Court, so as to make said injunction temporary, rather than final.

II.

The United States District Court has jurisdiction to dissolve an injunction if the Court is convinced that it was improvidently granted in the first instance, though there

has been no change in circumstances since the injunction was granted.

III.

An order refusing to dissolve an injunction is appealable either under 28 U. S. C. A.-227, or under Section 963 of the Code of Civil Procedure of the State of California.

IV.

An order of a District Court granting or vacating, or refusing to vacate, an injunction, may be reversed if the Court abuses its discretion in so doing, or it appears that there has been a disregard for established principles of law.

V.

The United States District Court abused its discretion and disregarded established principles of law in refusing to dissolve its injunction previously given, because by such refusal it denied to these appellants all recourse for the wrongful taking of said appellants' personal property on September 28, 1942, its detention thereafter, its subsequent deterioration, and for the value of its use from September 28, 1942, until January 12, 1944, for the following reasons:

(a) The machinery and equipment described in the State Court actions being personal property as between the respondent government and these appellants, the District Court acquired no jurisdiction over the personal property described in said State Court actions until the filing

of the Amended Complaint on January 12, 1944, by which a new cause of action was stated by which it was first sought to condemn said personal property, and therefore, no award can be made to these appellants in the condemnation action for the use and deterioration in value of the personal property between the filing of the original Complaint on September 28, 1942, and the filing of pleading designated an Amended Complaint, which was in fact a Supplemental Complaint, on January 12, 1944.

(b) Although the so called Amended Complaint in the condemnation action was filed January 12, 1944, whereby it was sought to condemn the personal property described in the State Court actions, the commencement of the State Court actions on September 27, 1945, and the maintenance thereof do not constitute a violation of the rule that the Court which first acquires jurisdiction in an action in rem is entitled to retain exclusive jurisdiction of such action, because the State Court actions in so far as they seek to recover the value of the loss of the use and of the depreciation in value of such personal property are actions in personam rather than actions in rem, and the District Court is without jurisdiction to grant relief for the unlawful taking and detention of such personal property.

(c) The conclusions of the Court and its decisions on the Motion for Injunction rendered herein by the Honorable Paul J. McCormick of the United States District Court on June 12, 1945, and the Findings of Fact, Conclusions of Law and Judgment rendered by Judge William J. Palmer on October 24, 1945 in State Court actions

489318 and 489319, are res adjudicata in this action, in so far as they determine that the personal property of appellants taken on September 28, 1942, was wrongfully taken and that such wrongful taking has never been ratified by the respondent government or any agency thereof.

(d) The determination by the Circuit Court of Appeals in this condemnation proceeding, in *United States vs. Samuel Block*, 160 F. 2d 604, that the award made for the taking of personal property in connection with condemnation proceedings must be predicated upon the value of the property when it is first lawfully taken pursuant to such proceedings, is the law of the case.

(e) The prosecution of the State Court actions will in no wise interfere with the jurisdiction of the District Court to proceed to trial and to make an award to these appellants for the value of their leasehold interest in the real property and the value of their personal property at the time of the filing of the Amended Complaint in the condemnation action on January 12, 1944.

(f) Defendant Treasure Company having the right to remove improvements put on the land covered by its lease, it was not entitled to recover compensation for such improvements in this condemnation action, until the Supplemental or Amended Complaint was filed.

(g) The provisions of Section 265 of the Federal Judicial Code renders the granting of the injunction in this case erroneous, an abuse of discretion, and a violation of established principles of law, and therefore, said Order refusing to vacate said injunction should be reversed.

DESIGNATION OF RECORD

Appellants hereby designate the entire record as certified by the Clerk of the United States District Court in this appeal, to be printed, together with this Designation, and to be considered in connection with the above Points.

Respectfully submitted,

BODKIN, BRESLIN & LUDDY

By Henry G. Bodkin

Attorneys for Appellants, Treasure Company, a corporation, and Samarkand Oil Company, a corporation

Dated: October 23, 1947.

[Endorsed]: Filed Oct. 24, 1947. Paul P. O'Brien, Clerk.